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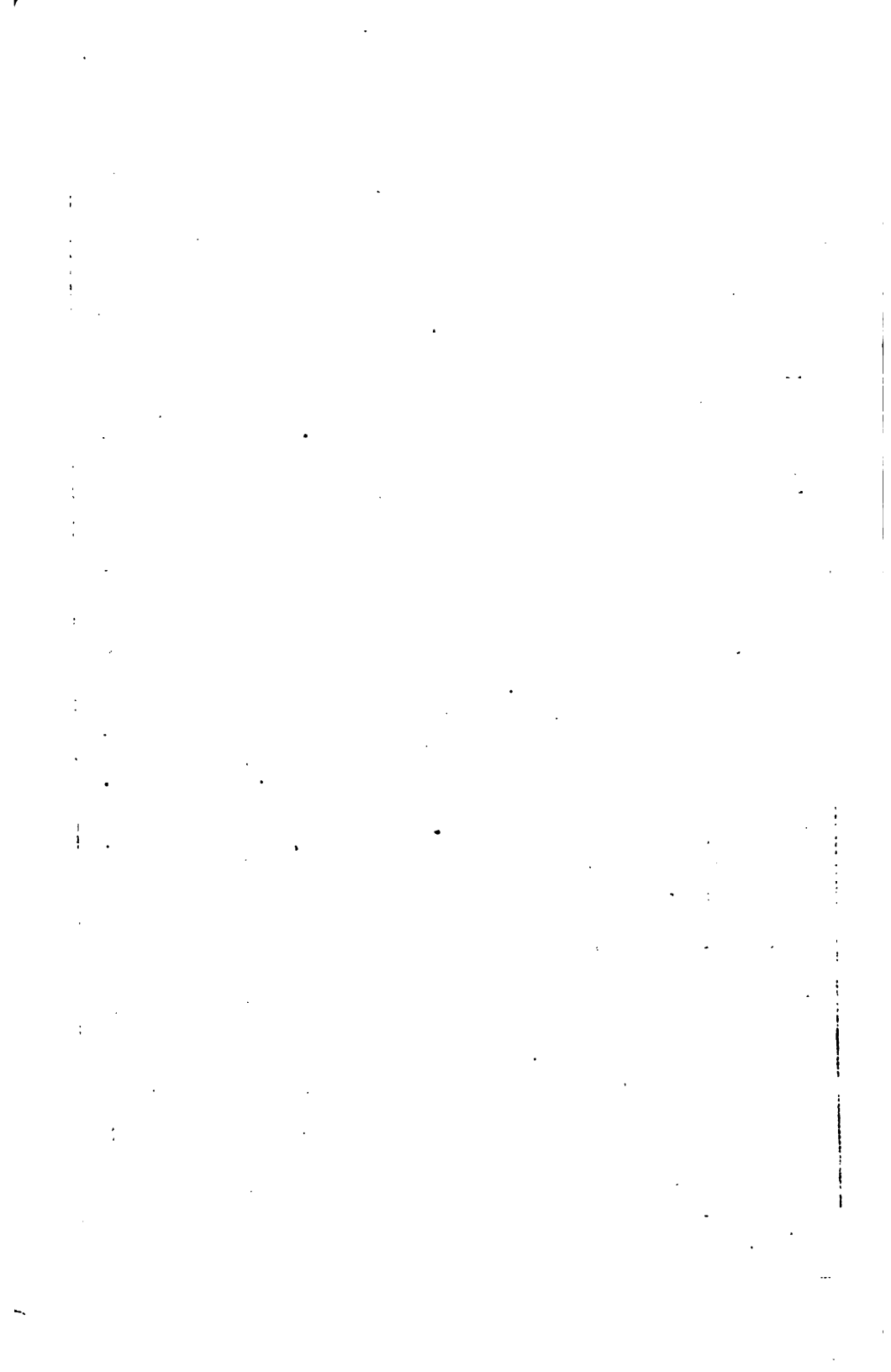
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A TREATISE
UPON
THE LAW OF EXTRADITION.

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A TREATISE
UPON
THE LAW OF EXTRADITION.

WITH
THE CONVENTIONS UPON THE SUBJECT EXISTING
BETWEEN ENGLAND AND FOREIGN NATIONS, AND THE
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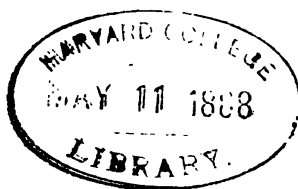
BY
George
SIR EDWARD CLARKE, KNT.
HER MAJESTY'S SOLICITOR GENERAL;
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PREFACE TO THE THIRD EDITION.

I AM glad to know that during the twenty years which have elapsed since the publication of the First Edition of this work it has held its place as the recognised textbook of the law upon a very important subject. In preparing this edition I have been assisted by my friends and former pupils, Mr. N. Paliologus and Mr. George Rosher. I believe it will be found that their industry has added to the work a complete record of all the treaties which have been made and all the cases which have been decided since the last edition was published.

EDWARD CLARKE.

5 ESSEX COURT, TEMPLE,
November 17th, 1887.

PREFACE TO THE SECOND EDITION.



SINCE the First Edition of this work was published the law of Great Britain with regard to Extradition has been greatly altered, and several new Conventions have been made with foreign States. That edition was received with great favour both in this country and in the United States, and was long ago exhausted. In the task of revising the work and adapting it to the present state of the law, I have been much hindered by other engagements, and the delays, for which I alone am responsible, have severely taxed the patience of my publishers. I have, however, spared no pains to make the present volume what I hope and believe my legal brethren will find it—a complete and trustworthy exposition of the law of Great Britain, Canada, France, and the United States upon a subject of great and of increasing importance.

EDWARD CLARKE.

3 GARDEN COURT, TEMPLE,
July 1874.

PREFACE TO THE FIRST EDITION.

THE Law of Extradition has, until very recently, attracted little attention in England. Various circumstances have of late brought it into frequent public discussion, and it seems advisable that the information upon the subject should be gathered into a convenient form. Several cases, three of them of great importance, have lately been decided in the English Courts; and during a Parliamentary discussion which took place a few months ago, Lord Stanley assured the House of Commons that an opportunity would be afforded next Session for a full and deliberate consideration of the whole subject. The only English book expressly devoted to it is a small pamphlet, published, twenty years ago, by Mr. Charles Egan. This pamphlet, written soon after the treaties with the United States and France were concluded, never pretended to be in any sense a text-book, and has long ceased to be of practical utility. Some valuable remarks upon the question were contained in a pamphlet published by the late Sir George Cornewall Lewis in 1859, but he referred almost exclusively to the

theory of the subject. No attempt has hitherto been made to collect and compare the cases decided in England and the countries with which in this matter she is most closely connected.

Having been engaged in the three most recent cases in England, I have given a good deal of study to the subject, and I venture to hope that the results of that study, extended for the sake of completeness to the laws of America and France, may not only be useful to the members of my own profession, but may help the public to understand, and the Legislature satisfactorily to deal with, a question which becomes every year of more importance to the world.

EDWARD CLARKE.

3 PUMP COURT, TEMPLE,
December 1st, 1866.

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A TREATISE

UPON

THE LAW OF EXTRADITION.

CHAPTER I.

THEORY OF THE SUBJECT.

THE subject of extradition has been discussed far more in its political than in its legal aspects. National interest, prejudice, or passion has always governed the deliberations of senates, and has sometimes affected the decisions of the courts. An attempt is made in this volume to ascertain the true principles of the question, and, as briefly as correctness will permit, to trace the history of the law in the United States, England, Canada, and France, and to indicate the rules of practice observed in each of those countries.

In discussion upon this subject it has been often said that the majority of jurists deny the existence of any right to demand extradition. That this assertion is incorrect will be seen by an examination of the opinions of some of the most eminent of early or recent writers.

Beginning with the great jurist who may be considered the founder of modern public law, we find Grotius expressing a very clear opinion as to the existence of this duty :—

“Punishment, as we have said, according to Natural Law, may be inflicted by any one who is not open to a like charge ; though, no doubt, it is in conformity with civil institutions that the delicts of individuals with regard to their own community should be left to that community, and to its rulers, to be punished or passed over as they choose. But there is not the same full power left to them in delicts which in any way pertain to human society in general ; for these, other states may prosecute, as in particular states there is a prosecutor of certain offences which any one may put in motion ; and much less have they such a power in offences by which another state or its ruler is specially assailed, and in which, consequently, the state or the ruler have, on account of their dignity or security, a right of exacting punishment as we have said. This right is not to be impeded by the state in which the offender lives, or its ruler.

“But since states are not accustomed to permit another state to enter their territory armed for the sake of exacting punishment, nor is that expedient ; it follows that the city where he abides who is found to have committed the offence ought to do one of two things—either itself, being called upon, it should punish the guilty man, or it should leave him to be dealt with by the party who makes the demand ; for this is what is meant by ‘giving

him up,' so often spoken of in history. . . . All which passages, however, are so to be understood, that the people or king are not strictly bound to give up the person, but, as we have said, to punish him. . . . It is a disjunctive obligation." (Bk. ii. c. 21, §§ 3, 4.)

Vattel lays down the same principle of a duty, either to punish the fugitive criminal or to deliver him up to the injured state, in very explicit terms, and adds :

"This is pretty generally observed with respect to great crimes, which are equally contrary to the laws and safety of all nations. Assassins, incendiaries, and robbers are seized everywhere, at the desire of the sovereign in whose territories the crime was committed, and are delivered up to his justice. The matter is carried still further in states that are more closely connected by friendship and good neighbourhood. Even in cases of ordinary transgressions, which are only subjects of civil prosecution, either with a view to the recovery of damages, or the infliction of a slight civil punishment, the subjects of two neighbouring states are reciprocally obliged to appear before the magistrate of the place where they are accused of having failed in their duty. Upon a requisition of that magistrate, called 'letters rogatory,' they are summoned in due form by their own magistrates, and obliged to appear. An admirable institution, by means of which many neighbouring states live together in peace, and seem to form only one republic." (Bk. ii. § 76.)

The principal authority quoted against the existence

of this right is Pufendorf.* The citation, however, is erroneous, as will be seen from the following passages :—

“ Among the several ways the governors of a commonwealth are involved in wars from the injuries committed by their subjects, these two, I think, will most deserve

* Story says (*Conflict of Laws*, p. 879) that “ Pufendorf explicitly denies it as a matter of right.” But in the edition of 1865 this note is appended :—“ For this reference to Pufendorf’s opinion I must rely on Burlamaqui (part 4, c. 3, §§ 23, 24), not having been able to find it in his *‘Treatise on the Law of Nations.’* The only reference to the point which I have met with in that work is in book viii. c. 3, §§ 23, 24.” In this statement and note there are four errors. Pufendorf does not explicitly deny the right. Burlamaqui does not say so. The passage, book viii. c. 3, §§ 23, 24, does not relate to the matter at all. The passage given in the text, book viii. c. 6, § 12, does expressly refer to it. Sir G. O. Lewis corrected part of the error, and referred to the proper section in the sixth chapter of Pufendorf’s eighth book. But, strangely enough, he referred to that passage as an authority for the statement that Pufendorf holds that a state is only bound by treaty engagements, or by some special circumstance, to surrender a fugitive criminal, a proposition which the passage he quotes does not support in the least (*‘On Foreign Jurisdiction,’* &c., 37). Story’s mistake has been copied with persistent carelessness. In Wheaton (edition 1863), Phillimore (1854), and Fœlix, the reference to Pufendorf is *‘Elementa,’* lib. viii. c. 3, §§ 23, 24. In Kent (1854) and Halleck (1861) no reference to Pufendorf is given. Woolsey (1864) gives no references at all. Egan was content to quote Story without verifying. The references of Wheaton, Phillimore, and Fœlix are incorrect. The book Pufendorf published in 1660, entitled *‘Elementorum Jurisprudentiæ Universalis libri ii.’* (Cambridge, 1672), only contains two books; the first comprising twenty-one definitions; the second, two axioms and five observations. Of course, no such passage as *‘lib. viii. c. 3, §§ 23, 24’* can be found in it. The true reference to Pufendorf is given in the text.

our consideration—viz., sufferance and reception. . . . The guilt of a crime before it hath been judicially tried remains upon them who commit it; but after sentence is passed upon it, they are the criminals who neglect to put the law in execution. The case of reception, and how far the commonwealth gives reason for war against itself by receiving and defending persons who have injured others, may be seen at large in Grot., lib. ii. c. 21, §§ 3, 4, 5, 6.”*

The only passage which can possibly be quoted in support of the assertion that Pufendorf denies the duty of extradition, is to be found in the least known of all his works, the treatise, ‘*De Officio Hominis et Civis juxta Legem Naturalem.*’ After saying that a sovereign state is presumed to have power over its subjects, and that knowingly suffering them to commit crimes it shares their guilt; he adds, that the liability to war which a state incurs when it receives and protects fugitive criminals arises rather from special compact than from any general obligation.†

* ‘*Law of Nature and Nations*’ (bk. viii. c. 6, § 12). Trans. by Basil Kennett, D.D., Lond. 1749. “*Circa receptum autem, et quatenus civitas causam belli contra se præbeat, recipiendo et defendendo eos qui in alios deliquerunt, plene docet.*” Grotius, d. 1, §§ 3, 4, 5, 6. ‘*De Jure Naturæ et Gentium.*’ Ed. Hertius and Barbeyrac. Frankfort and Leipsic, 1744.

† “*Ut tamen qui noxium ad se confugientem poenæ duntaxat declinandæ causa recepit et protegit, bello peti possit: id magis ex peculiari pacto inter vicinos et socios, quam communi aliqua obligatione provenit; nisi iste profugus apud nos hostilia in eam civitatem quam deseruit machinetur.*” (Lib. ii. c. 16.)

This is very far short of a denial of the duty of extradition ; but upon this Burlamaqui says that it was without sufficient reason that Pufendorf made this qualification, and that the rule laid down by Grotius is well established. He himself calls it, "*une obligation commune et indispensable.*"*

Paul Voet is another publicist whose authority has been quoted in favour of considering the rendition of criminals a matter strictly of comity, not of right. It is clear, from his writings, that the passages which have been made to bear this interpretation were caused by his strong opinion in favour of the right of any magistrate to try a criminal found in his jurisdiction, wherever the crime may have been committed. He holds that the magistrate is bound to punish such crimes ; that they must be judged by the laws of the place where they were committed ; but that, in assigning punishment, the magistrate is not bound to consider either the criminal's domicile, or the place of the crime. He should punish according to the quality of the fault, and the nature of the punishment imposed on that fault in his territory ; and if this be not sufficient, the criminal may be given up to the foreign magistrate. By the civil law he must be given up. But now this is hardly ever done, "*nisi ex humanitate,*" and then with letters rogatory, to save the local jurisdiction. (Lib. ii. c. 1.)

* '*Principes du Droit de la Nature et des Gens.*' Par J. J. Burlamaqui. Ed. Dupin. Paris, 1821. 5 vols. '*Droit des Gens* (part 4, c. 3, § 9).

Lord Coke's opinion is clearly against the duty of surrender. "It is holden, and so it hath been resolved, that divided kingdoms under several kings, in league one with another, are sanctuaries for servants or subjects flying for safety from one kingdom to another; and, upon demand made by them, are not, by the laws and liberties of kingdoms, to be delivered; and this, some say, is grounded upon the law in Deuteronomy, *Non trades servum domino suo qui ad te confugerit.*" (3d Inst., p. 180.) He then gives three instances. But it must be remarked upon this, that the words do not seem to apply to offenders against the criminal law; that the instances he gives are those of political offenders; and that there is no trace of any such resolution as he speaks of in the case of a fugitive criminal.* It must be added, that this dictum does

* "And I scarce understand Lord Coke's doctrine on this point, that foreign kingdoms, even when in league with one another, are sanctuaries for any subjects flying from one to another. How has he supported it? He says, 'It is holden, and so it hath been resolved,' but he neither tells us *when* nor *where* it was resolved. His examples from history are far from proving the point. The first, from Queen Elizabeth's time, shows good political reasons why her demands were not complied with, because she had before done what she complained of. That from Henry VIII. does not seem to prove anything, and that about Pool, the Earl of Suffolk, proves (if anything) the point I am contending for, and consequently is in the teeth of Lord Coke's own assertion."—*Wynne, Eunomus*, Dialogue iii. § 67. Wynne goes on to say that the assertion is directly against the law of nations, and that if a special treaty be made, it operates as a recognition, not a creation, of right. In the judgment in *Commonwealth v. Deacon*, 10 Sergeant & Rawle (U. S.), 125, Chief Justice Tilghman quoted Coke and Wynne's comment, and added, "Although Lord Coke was as great

not appear ever to have been used as an authority in an English court. Martens says that the extradition of criminals is not a matter of perfect obligation in a free state, whether the criminal be a subject of the state on which the demand is made, or of that which makes it, or of a third state. "Mais l'extradition d'un étranger sujet de l'état qui la reclame pour un crime commis chez lui ou même contre lui, quoique non fondée dans la rigueur de la loi naturelle, s'accorde plus fréquemment soit en vertu de traités, soit même par une simple déférence ou moyennant des réversales; surtout lorsque l'individu se trouve au service de cet état."—*Précis du Droit des Gens*, lib. iii. c. 3, § 101.

This is only a very qualified denial of the right, which, on the other hand, is asserted in express terms by Rutherford.

"What remains, therefore, for the nation to do is what the injured nation has a right to demand. He ought to be delivered up to those against whom the crime is committed, that they may punish him within their own territories. This is the right. But how far a nation that has been injured in itself or in its members will choose either to insist on this right at first by demanding the criminal, or to support it afterwards by force if the demand be not

a common lawyer as England ever produced, yet certainly he was not equally proficient in his knowledge of equity or of the law of nations. Perhaps indeed his attachment to the common law gave him a prejudice against all others. Yet when he says a matter has been resolved, I should think he might be relied on, for he certainly was not apt to speak without book."

complied with, depends upon its own discretion." (Bk. ii. c. 9, § 12.)

The two great jurists of America are in accord upon this subject, for there can be no reason why the opinion of Story upon the operation of a law of extradition among the States of the Union should not be applied to the more general question. He says :—

"However the point may be as to foreign nations, it cannot be questioned that it is of vital importance to the public administration of criminal justice, and the security of the respective states, that criminals who have committed crimes therein should not find an asylum in other states, but should be surrendered up for trial and punishment. It is a power most salutary in its general operation, by discouraging crime, and cutting off the chances of escape from punishment. It will promote harmony and good feelings among the states, and it will increase the general sense of the blessings of the national government. It will, moreover, give strength to the great moral duty which neighbouring states especially owe to each other, by elevating the policy of the mutual suppression of crime into a legal obligation. Hitherto it has proved as useful in practice as it is unexceptionable in its character." ('Story on the Constitution,' § 1803.)

Kent quotes the opinions of Grotius, Vattel, and others, and then adds :—

"The language of these authorities is clear and explicit, and the law and usage of nations as declared by them rests upon the plainest principles of justice. It is the

duty of the government to surrender up fugitives upon demand, after the civil magistrate shall have ascertained the existence of reasonable ground for the charge, and sufficient to put the accused upon his trial. The guilty party cannot be tried and punished by any other jurisdiction than the one whose laws have been violated, and therefore the duty of surrendering him applies as well to the case of the subject of the state surrendering as to the case of a subject of the power demanding the fugitives." ('Commentaries,' ed. 1854, p. 40.)

To these citations may be added the opinions of three Englishmen, all, from their position and character, entitled to be listened to upon such a subject.

Lord Brougham said in the House of Lords on the 14th of February 1842:—"He thought the interests of justice required, and the rights of good neighbourhood required, that in two countries bordering upon one another, as the United States and Canada, and even that in England, and in the European countries of France, Holland, and Belgium, there ought to be laws on both sides giving power, under due regulations and safeguards, to each government to secure persons who have committed offences in the territory of one and taken refuge in the territory of the other. He could hardly imagine how nations could maintain the relationship which ought to exist between one civilised country and another without some such power."

Lord Campbell, upon the same occasion, said:—"For his own part, he would like to see some general law enacted, and held binding on all states, that each should

surrender to the demands of the others all persons charged with serious offences except political. This, however, he feared, was a rule or law which it would be difficult to get all nations to concur in." *

And in the most valuable of his works Sir George Cornwall Lewis thus laid down the increasing obligation of the duty :—

"A customs league (such as the German Zollverein) and treaties of international postage, copyright, and the extradition of criminals, afford other instances of an infraction of the principle of national exclusiveness, and of an approximation to the formation of all nations into a combined political system. These examples will suffice to show the close connexion which subsists between the progress of civilisation and the relaxation of the national principle, so as to render it consistent with a more enlarged principle of association." ('Methods of Observation and Reasoning in Politics,' ii. 454.)

It has been said by some recent writers that the existence of any duty of extradition is negatived by the treaties which have been made upon the subject. This clearly is a *non sequitur*; a treaty may often be necessary to regulate and limit the performance of a duty of undisputed obligation; and that the granting of extradition is, if not scientifically speaking a matter of perfect obligation, at least a duty of public morality, has not been denied by any writer worth notice. It is evident that the reasons assigned by early writers for the performance of this duty

* 60 Hansard, 319, 325.

have in the progress of society been constantly acquiring greater weight. The complexity of business transactions, the vast extension of credit, the general use of paper-money of various kinds, all make it easy for a modern criminal to commit a fraud which may cause far more wide-spread misery than a similar act could formerly have produced, and to insure at least a few hours' concealment of his guilt. And other improvements—the use of steam, the multiplication of means of locomotion—make it easy for him in those few hours to effect his escape to a foreign country. While the duty of extradition has thus been increasing in weight, the general tendency of European legislation has been to take from the sovereign the right to grant the surrender by his own prerogative. It has thus been found necessary to make provision by treaty or legislative enactment for the performance of this duty; and in no country but England has this been found difficult. In England, however, objections have constantly been raised to the Acts and treaties proposed. So far as the objectors bring forward any reason beyond rhetorical and quite inapplicable disquisitions upon national independence, they rely chiefly upon the possibility that a treaty may be abused for the purpose of procuring the rendition of political offenders. That question will be discussed in a later chapter; here it is sufficient to say that no treaty can prevent its own infraction. If a nation cannot be trusted, no treaty is of any use; if it can, it is very easy to agree upon provisions by which the desires of both parties may be met.

It has been recently suggested that, instead of granting the extradition of criminals, the domestic law should be extended to crimes committed abroad. But for this suggestion, the subject of extra-territorial jurisdiction in criminal matters would hardly be worth discussion in England. True it is that many of the Continental states punish crimes committed in other countries by their own subjects, or even by foreigners, and to some slight extent England has adopted the practice. But there are two answers to the argument that its extension would be a substitute for laws of extradition. In the first place, it does not remove the evil. The being made a resort for foreign malefactors is as great a mischief to any country as the escape of offenders against its own laws. The extradition treaty between England and France, for instance, is intended to remedy both these evils. No extension of extra-territorial jurisdiction could have the same effect. Neither country could reclaim its criminals, and Englishmen would wisely think that it was very little advantage to them to be able to try a Frenchman for crimes with which England had nothing to do, or to know that if witnesses were sent over to Paris, the English fugitive might possibly be punished there for the fraud committed in London. The other objection to the system is, that it is ineffective and unjust. It is an indisputable principle of English jurisprudence that crime must be tried by the law of the place at which it was committed; our tribunals would therefore have to administer foreign laws. The expense of prosecution, always heavy, would become

prohibitive if witnesses had to be conveyed to a foreign country; and, most serious objection of all, in the great majority of cases it would be impossible for an innocent man, so accused, to obtain the evidence which he might require for his defence.

From the passages just quoted, and many others of similar import, the following conclusions may be drawn:—

The surrender of fugitive criminals is an international duty. It may not be so plainly a matter of right that the refusal to grant it should subject a nation to the penalty of war, but such refusal is so clearly injurious to the country which refuses, and to the whole world, that it is a serious violation of the moral obligations which exist between civilised communities.

In former times, the surrender was granted by a sovereign in virtue of his own prerogative; but the recent course of European legislation has been to restrain this prerogative, and to cast upon the legislature of a country the task of providing for the performance of this duty.

This provision should be guarded by the exclusion of political offenders, and the requirement of some evidence of guilt before the accused person is delivered up. It would be wise also to restrict the crimes for which surrender should be granted, according to the facility with which criminals could escape from one country to another; but to refuse to make provision at all, would be to inflict an injury upon the whole world, and especially upon the country so refusing.

The surrender, when so restricted, involves no interference with national independence, as the duty of punishing the crime could not be effectively and justly performed by any nation but that whose laws have been broken.

For the only substitute for extradition which has been proposed—the extension of extra-territorial jurisdiction—is contrary to sound and well-established principles of law, is inconvenient in its enforcement, obstructs the course of justice by making the prosecution of crime difficult and expensive, and is unjust to the accused by making it almost impossible for an innocent man to produce the confutation of the charge; thus combining the gravest defects possible in a system of criminal jurisprudence.

CHAPTER II.

EARLY TREATIES AND CASES.

WITHOUT some history of the practice of extradition, so far as it existed, in early times, this book would be incomplete; but the materials for such a history are very scanty, and the few instances produced by different writers in proof or disproof of the duty of rendition are in most cases of doubtful application. The historic origin of the practice is to be found in the relations of the different provinces of the Roman Empire. Under the Republic, a Roman citizen accused of a capital offence might, at any time before decision was pronounced, escape the sentence by going into voluntary exile; and certain of the allied cities were specified by treaty as inviolable places of refuge.* Under the Empire these cities were absorbed into the imperial dominions, and lost their protective character. Few passages of Gibbon have been more often and more deservedly quoted than the splendid sentences in which he described the wide-reaching power of the imperial government:—

“The division of Europe,” he says, “into a number of

* Gibbon, ‘Decline and Fall,’ v. 296; Merivale, ‘History of the Romans under the Empire,’ iii. 496.

independent states, connected however with each other by the general resemblance of religion, language, and manners, is productive of the most beneficial consequences to the liberty of mankind. A modern tyrant, who should find no resistance either in his own breast or in his people, would soon experience a gentle restraint from the example of his equals, the dread of present censure, the advice of his allies, and the apprehension of his enemies. The object of his displeasure, escaping from the narrow limits of his dominions, would easily obtain, in a happier climate, a secure refuge, a new fortune adequate to his merit, the freedom of complaint, and perhaps the means of revenge. But the empire of the Romans filled the world, and when that empire fell into the hands of a single person, the world became a safe and dreary prison for his enemies. The slave of imperial despotism, whether he was compelled to drag his gilded chain in Rome and the senate, or to wear out a life of exile on the barren rock of Seriphus, or the frozen banks of the Danube, expected his fate in silent despair. To resist was fatal, and it was impossible to fly. On every side he was encompassed with a vast extent of sea and land, which he could never hope to traverse without being discovered, seized, and restored to his irritated master.”*

So far, however, as regarded claims of extradition made by the Romans upon independent nations, they seem to have been confined to enemies of the state. Thus, at the end of the war with Antiochus, King of Syria, the Romans

* ‘Decline and Fall,’ c. 3, *ad fin.*

stipulated by treaty for the delivery up of Hannibal and four Greeks who had been instrumental in promoting the war. Hannibal, however, then escaped.* He was afterwards demanded of the King of Bithynia, and the demand conceded; but he escaped the surrender by death.†

The Roman law, however, required the surrender of citizens who offered violence to foreign ambassadors on Roman territory. Under this law two Romans were surrendered to the Apolloniatae in 266 B.C., and two others to the Carthaginians in 188 B.C.‡

In the early cases found in modern history, it was always for political offences that the surrender was claimed; indeed, at a time when the transactions of life were comparatively simple, crime was so easily detected, and the criminal had so few means of escape, that there was no necessity for those provisions which the complicated civilisation of the world now renders necessary.

A few treaties have been quoted by writers upon extradition, either as recognitions of the duty, or in disapproval of the right. By a treaty concluded as early as 1174, between Henry II. of England and William of Scotland, it was agreed, that if any persons guilty of felony in England should fly into Scotland, they should be immediately seized, and either be tried in the King of Scot-

* Polyb., xxi. 14, xxii. 26.

† Livy, xxxix. 51.

‡ Dig. 50, 5, 17. Rein. 'Criminalrecht der Römer,' p. 175-6. Quoted by Sir G. C. Lewis, 'On Foreign Jurisdiction,' p. 51.

land's courts, or delivered up to the justices of England, and *vice versa*.*

By the treaty of Paris, concluded in May 1303 between England and France, it was agreed that neither sovereign should grant protection to the enemies of the other.† And by a treaty made by Charles V. of France with the Duke of Savoy in 1378, it was provided that all malefactors who had fled from Savoy to Dauphiny, or from Dauphiny to Savoy, should be delivered up, even if they were subjects of the state surrendering them.‡

The *Intercursus Magnus*, concluded between Henry VII. and the Flemings in 1497, provided against the harbouring by one power of the rebels of another. Its provisions and effect will best be described in Bacon's words:—

“This is that treaty which the Flemings call to this

* Ward, ‘Hist. of the Laws of Nations,’ ii. 319; Rymer, i. 39; M. Par., 131, 37.

† Fœlix says he can find no trace of this treaty, ii. 327 n. See Hallam, ‘Middle Ages,’ i. 44. The article is thus printed in Rym., tom. ii. 927, 31 Edw. I., A.D. 1303:—“Item, accorde est que l'un ne receptera, ne soustendra, ne confortera, ne sera confort, ne ayde aus enemis de l'autre; ne ne souffera qe il aient confort, secours, ne ayde (soit de gents d'armes, ou de vitailles ou d'autres choses, queles qe eles soient) de ses terres, ne de sun poair; mais defendra sur peine de forfaiture de corps et d'avoir, et empeschera a tout sun poair, loialment et en bone foi, qe les ditz enemis ne soient receptez, ne confortez es terres de sa seigneurie, ne de sun poair. Ne que il en aient confort, secours, ne ayde (soit de gents d'armes, de chevaux, d'arneur) anzois les fera vender dedens quarante jours apres ce qe il en ferra requis.

‡ Blondel, ‘Monographie Alfabétique de l'Extradition,’ 91 Isanbert, ‘Collection des Lois,’ vol. v. p. 479.

day Intercursus Magnus; both because it is more complete than the precedent treaties of the third and fourth year of the king, and chiefly to give it a difference from the treaty which followed in the one-and-twentieth year of the king, which they call Intercursus Malus.

"In this treaty there was an express article against the reception of the rebels of either prince by other; purporting that if any such rebel should be required by the prince whose rebel he was of the prince confederate, that forthwith the prince confederate should, by proclamation, command him to avoid his country; which if he did not within fifteen days, the rebel was to stand proscribed, and put out of protection. But nevertheless, in this article Perkin [Warbeck] was not named, neither perhaps contained, because he was no rebel. But by this means his wings were clipt of his followers that were English."*

On the 23rd February 1661 a treaty was made between Charles II. and Denmark, by which the latter agreed to deliver up, on requisition, all persons who had been concerned in the murder of Charles I. The States-General of Holland delivered up some of the regicides without any treaty stipulations; but in 1662 (14th September) a treaty was made by which they agreed to give up any persons excepted from the English Act of Indemnity, and all other persons demanded by the English Government.

Under this treaty a demand was made by James II., in 1687, for the extradition of Burnet, who was then acting

* 'History of Henry VII.' 6 Bacon's Works. Ed. Spedding. Ellis & Heath, 173.

as private secretary to the Prince of Orange, and who, for various violent writings against the king, had recently been cited before a Scottish court, and, not appearing, had been outlawed. The circumstances of the case, as related by Burnet himself, and with due allowance made for that fact, are very interesting, and the decision of the States-General may be compared with advantage with some of the recent judgments upon this subject. The English ambassador (Albeville) having demanded Burnet's banishment from the United Provinces, the deputies of the States of Holland called upon him to make answer. He claimed the protection of the States as a naturalised subject.* If he was charged with any offence against the laws of the provinces he would submit to trial. He could not be considered a fugitive or rebel; he had left England three years before, with the king's leave, and had not been in Scotland for fourteen years. As to the sentence which had been passed against him, he could say nothing to that until he saw a copy.

The States hereupon ordered their ambassador to represent to James that naturalisation was a sacred thing, and that if he had anything to lay to Burnet's charge, justice should be done in their courts. Albeville then presented another memorial, in which the article of the treaty was set forth:—

“It was insisted on that, since the States were bound not to give sanctuary to fugitives and rebels, they ought

* He had obtained naturalisation just before, on receiving news of the commencement of proceedings in Scotland.

not to examine the grounds upon which such judgments were given, but were bound to execute the treaty. Upon this it was observed that the words in treaties ought to be explained according to their common acceptation, or the sense given them in the civil law, and not according to any particular forms of courts, where for non-appearance a writ of outlawry or rebellion might lie; the sense of the word 'rebel,' in common use, was a man that had borne arms, or had plotted against his prince; and a 'fugitive' was a man that fled from justice."*

It is obvious that these treaties prove little one way or the other. They mostly relate to political offenders, who were given up, not as criminals but as enemies of the sovereign, and it would be attaching far too much importance to the treaties of 1174 and 1378, to take them as a proof of a necessity for treaty stipulations to justify the demand of the surrender of a criminal.

Most of the cases of extradition, demanded in the absence of treaties, are equally inconclusive.

The delivery up of the Count de St. Pol to Louis XI., by Charles Duke of Burgundy, in violation of his own letters of safe conduct; the surrender of the Earl of Suffolk, by the King of Spain, to Henry VII., upon the ill-kept promise that his life should be spared; and the promise of Elizabeth either to deliver up Bothwell to the Scots, or to send him out of the kingdom, prove as little on one side as the refusal of the King of Scotland to give up Perkin Warbeck; of the King of France, in 1584,

* Burnet, 'History of his own Time' (Ed. 1833), i. 730.

to give up to Elizabeth, Morgan and other Englishmen who were said to be plotting in France against England; and that of France to deliver up Cardinal Pole to Henry VIII., do upon the other.

In 1588 Farnihurst was demanded by Elizabeth from the King of Scotland, he being charged with having been instrumental in the murder of Sir John Russell, the eldest son of the Earl of Bedford. The king refused to deliver him up except upon conviction by a fair trial, but he caused him to enter into ward in the town of Aberdeen."*

After the Restoration the States of Holland gave up some of the regicides before any treaty for that purpose had been made; but others took refuge in Switzerland, which declined to surrender them.

The most notable instance of the surrender of a political offender in recent times is that of Napper Tandy, who, being attainted of treason, was given up by the Senate of Hamburg, on the demand of the English Government in 1792. He was tried in Dublin and acquitted.†

As to the common law of England upon the duty of according extradition, five cases have been cited:—*Rex v. Hutchinson* (3 Keble, 785), *Rex v. Lundy* (2 Ventris, 314), *Rex v. Kimberley* (2 Stra. 848), *East India Co. v. Campbell* (1 Ves. senr. 246) and *Mure v. Kaye* (4 Taunt. 34).

Of these cases the first three do not touch the subject of extradition at all. In *Hutchinson's* case the prisoner

* Sir W. Scott's 'History of Scotland,' ii. 33.

† 27 Howell's 'State Trials,' 1191.

was accused of murder committed in Portugal, and he was remanded upon the contention of the attorney-general that the offence, being without the dominions of the Crown, was triable by constable and marshal, and not by commission.

In the cases of Lundy and Kimberley, the only point decided was that Ireland came within the proviso of the Habeas Corpus Act, that persons accused of crime in any part of the King's dominions might be sent thither for trial.

In neither of the other cases was a decision as to the legality of extradition necessary, but in each a very clear opinion was expressed. The case of the East India Co. *v.* Campbell was tried in 1749, on the equity side of the Court of Exchequer, Lord Chancellor Hardwicke and Chief Baron Parker taking part in the decision. It was there laid down in the judgment of the whole court, that "the Government may send a prisoner to answer for a crime wherever committed, that he may not involve his country, and to prevent reprisals." Mr. Justice Heath, whose opinion on this point was given in *Mure v. Kaye* (1811), was a judge of very high reputation, and his dictum was not dissented from by the other members of the court.

He said: "As to the first point, it has generally been understood that wheresoever a crime has been committed the criminal is punishable according to the *lex loci* of the country against the law of which the crime was committed, and by the comity of nations the country in which the

criminal has been found has aided the police of the country against which the crime was committed in bringing the criminal to punishment. In Lord Loughborough's time the crew of a Dutch ship mastered the vessel, and ran away with her, and brought her into Deal, and it was a question whether we could seize them and send them to Holland, and it was held we might, and the same has always been the law of all civilised countries."

In an opinion given to the Government in 1792, by Serjeant Hill, upon the question of the king's prerogative to expel aliens from the kingdom, the same doctrine is very clearly laid down:—"As to subjects of states in amity, I think the king hath no power over any, if they do not offend his laws, but such as are charged by the states whose subjects they are with high-treason, murder, or defrauding their state, or other atrocious crimes. And as to them, if the sovereign of such state applies to have them delivered up, I think his majesty is, by the constitution, invested with the power of granting or refusing the application, and if granted, may issue a proclamation either to quit his dominions, or else may order them to be apprehended, and sent in safe custody and delivered to such persons as the sovereign of the state to which they belong shall appoint; and if any of them should procure a writ of Habeas Corpus, the special matter might be returned, and they would not be entitled to be discharged, for this is warranted by the practice of nations, and is therefore not part of the legislative, but of the

executive, power, which is vested solely in the king, who, as observed by a late learned judge (1 Bl. Comm. 253), with regard to foreign concerns, is representative of his people, and what is done by the royal authority with regard to foreign powers (he adds) is the act of the whole nation; and the prerogative in this respect has always been taken to be so clear that no foreigner ever contested it in the English courts of justice, and the Habeas Corpus appears to have been designedly so penned as not to interfere with it; for the prohibition in that act (sec. 9 and 12) against removing persons from one prison to another, or sending them abroad, is confined to subjects of this realm, whereas all the other provisions of the act extend to all persons and all prisoners, without once mentioning the subjects of the realm, and therefore all the others are intended to extend to aliens, and this not so."*

Upon the authority of *E. I. Co. v. Campbell*, and *Mure v. Kaye*, it is laid down, in 'Chitty on the Criminal Law' (1826), that "an English magistrate may also cause to be arrested, and committed for trial, an offender against the Irish law, or accused of having perpetrated a crime in a foreign country" (p. 14); and "if a prisoner, having committed a felony in a foreign country, come into England, he may be arrested here and conveyed and given up to the magistrates of the country against the laws of which the offence was committed" (p. 16).

These opinions may have been correct, but they have

* 'Edinburgh Review,' xliii. 141.

ceased to be law now. If any magistrate were now to arrest a person on this ground, the validity of the commitment would certainly be tested, and, in the absence of special legislative provisions, the prisoner as certainly discharged upon application to one of the superior courts.

CHAPTER III.

HISTORY OF THE LAW IN THE UNITED STATES.

FOR various reasons, the record of the Acts passed and the cases decided in the United States is entitled to the first place in a history of the modern law and practice of extradition. At the formation of the Union, the question of the rendition of criminals who fled from one state to another to escape the vengeance of the laws they had transgressed, was one of the difficulties with which the founders of the great republic had to deal. The proximity of Canada, and the length of boundary line which made the flight of the criminal so difficult to intercept, soon raised the question from one of local administration to one of national policy. Men were found quite equal to deal with either. The American judicial bench has been adorned by men who added the lawyer's knowledge to the statesman's thought, and who, bringing both to bear on the questions of public law, have left us works of enduring value. In the matter of extradition, the American law was, until 1870, better than that of any country in the world; and the decisions of the American judges are the best existing expositions of the duty of extradition, in its relations at once to the judicial rights of nations and

the general interests of the civilisation of the world. A few words will suffice with regard to the domestic aspect of the question in the Union. Before the revolution, a criminal who committed a crime in one of the colonies and fled to another was arrested, wherever found, and sent for trial to the place where the offence was committed.* And the second section of the fourth article of the Constitution of the Union, substantially repealing a clause in the fourth article of Confederation, declared, that "a person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." In 1791 a demand under this article was made by the governor of Pennsylvania upon the governor of Virginia for the surrender of a fugitive from justice. Doubts were raised as to the person to whom the demand should be addressed and the mode in which it should be made, and the Executive of Virginia refused the surrender, because, as, amongst other reasons, was alleged, Congress had not passed any statute to execute this provision of the supreme law of the land. The opinion of the attorney-general of Virginia assuming that position, and the reply of the Executive of that state sanctioning it, were communicated to Congress by President Washington in October 1791; and to remove the doubts

* *Short v. Deacon*; judgment of Tilghman (C.J.), 10 *Sergeant & Rawle*, at p. 129.

thus raised, the Act of Congress of 12th February 1793 was passed.* That Act made provision for the rendition of fugitives from justice and of fugitive slaves. The first section concerned criminals only, and declared that on demand made, accompanied with a copy of indictment found or affidavit made before a magistrate, charging the person with having committed "treason, felony, or other crime,"† and certified by the governor or chief magistrate of the demanding state to be authentic, it should be the duty of the executive magistrate of the state to which the person had fled to cause him to be arrested and secured, "and notice thereof given, and the person then to be delivered to the agent of the executive making the demand, if such agent should appear within six months. If no such agent appeared, the prisoner should be discharged." (1 Stat. at Large 302, 2 Congress, Sess. 2, ch. 7.) This still remains the law of the United States. The duty of the governor of the state from which the fugitive is claimed is purely ministerial. No discretion with respect to the nature or character of the crime charged is vested in him. But if he refuses to perform the duty cast upon him, there is no power conferred upon the judicial or any other department of the general government to compel him to do so. The Supreme Court cannot issue a mandamus for this purpose.‡

* Edmonds, J., in Metzger's case, 1 Barbour (S. C. of N. Y.), 257.

† These words include every offence forbidden and made punishable by the laws of the state in which the offence is committed. Sup. Court, 1860. *Kentucky v. Dennison*, 24 Howard, 66.

‡ Sup. Court, 1860. *Kentucky v. Dennison*, 24 Howard, 66.

To authorise the arrest and removal of a fugitive from justice to the state having jurisdiction of the crime, it must distinctly appear from the affidavits before the magistrate upon which the requisition is based that the offence was committed in the state from which the requisition proceeds.* The cases decided upon this statute have for the most part referred to rules of practice and evidence. References are given below† to a few of the most important, but none sufficiently affect the general question of extradition to need discussion here.

The first case in America[~] which the question of the duty of the extradition of criminals, independently of any treaty obligations, was discussed, was that of the Chevalier de Longchamps in 1784.‡ The circumstances of the case and of the demand of extradition were peculiar. The Chevalier de Longchamps was indicted before the Court of Oyer and Terminer at Philadelphia for threatening bodily harm to M. Marbois, the Consul-General of France in the United States, and Secretary to the French Legation, and also for an assault upon him. It appeared that M. de Longchamps went to M. Marbois, at his official residence, and, using violent language, threatened to dishonour him ("Je vous déshonorerai, Policon, Coquin"); and two days later, as they were talking together in a

* Seventh Circuit (Illinois), 1842. *Ex parte Smith*, 3 M'Lean, 121.

† *In re Leland*, 7 Abbott (N. Y.), Practice, N. S., 64; U. S. Digest, N. S., i. 322. *In re Rutter*, 7 Abbott (N. Y.), Practice, N. S., 67; U. S. Digest, N. S., i. 322. *Ex parte Pfitzer*, 28 Indiana, 450. ‡ *Respublica v. Longchamps*, 1 Dallas, 120.

public place, he struck with his stick the cane which M. Marbois held in his hand. The jury at first found the prisoner guilty of the assault only, but being desired by the court to reconsider the matter, they returned a verdict against him on both counts. The president (Washington) and the supreme executive council thereupon informed the judges that the minister of France demanded that M. de Longchamps, having appeared in the uniform of a French officer, and called himself an officer in the service of his majesty, should be delivered up to him for these outrages, to be sent to France. Two questions were submitted to the judges :—1. Could he be lawfully delivered up ? 2. If not, whether he ought not to be kept in prison until His Most Christian Majesty should declare the reparation satisfactory ?

Sentence was postponed, and these questions were fully argued on the 10th and 12th July 1784. On the 7th October judgment was given that—1. He could not lawfully be delivered up. The court, however, added, “We think cases may occur where the council could, *pro bono publico*, and to prevent atrocious offenders evading punishment, deliver them up to the justice of the country to which they belong, or where the offences were committed.” 2. The demand that he should be kept in prison until the King of France should declare the reparation satisfactory could not be complied with, as, by the law of America, the punishment must be certain and definite. A very heavy sentence was, however, passed. M. de Longchamps was fined one hundred French crowns, and sen-

tenced to imprisonment until the 4th July 1786, making a little over two years. He had further to find security to keep the peace for seven years, to pay the costs of the prosecution, and to remain committed until the sentence was complied with. It must be remembered, in explanation of the president's action in this matter, and perhaps of the severity of the sentence, that at this time there was special political reason in America for the desire to keep on good terms with France. The decision, however, upon the question of extradition was clearly right. No treaty required the rendition of the offender; his offence could only technically be called an offence against the King of France; the assault was committed on American soil, and the whole matter was clearly within the cognizance of American tribunals.

In this same year (1784) the legislature of Virginia passed an Act, which seems to show that the question of the power of an individual State of the Union to grant or demand extradition had already arisen. It provided for the surrender of any of her citizens who should go beyond the limits of the United States, and commit crimes within the jurisdiction of a foreign nation. But it was by this Act left to Congress to decide for what crimes extradition ought to be granted.*

In 1791 the Governor of South Carolina requested the President of the United States to demand of the Governor of Florida certain persons who had fled thither after having committed crimes in South Carolina. Mr. Jeffer-

* 11 Hen. Stat. c. 24, p. 471; Robinson's Practice, i. 7.

son, then Secretary of State, in his report to President Washington, said : " England has no convention with any nation for the surrender of fugitives from justice, and their laws have given no power to the executive to surrender fugitives of any description. They are accordingly constantly refused, and hence England has been the asylum of the Paolis, the La Mottes, the Calonnis ; in short, of the most atrocious offenders, as well as of the most innocent victims who have been able to get there. The laws of the United States, like those of England, receive every fugitive, and no authority has been given to our executives to deliver them up. If, then, the United States could not deliver up to General Quesnada (Governor of Florida) fugitives from the laws of his country, we cannot claim as a right the delivery of fugitives from us. And it is worthy of consideration whether the demand proposed to be made in Governor Pinckney's letter, should it be complied with by the other party, might not commit us disagreeably, and perhaps dishonourably." *

Another instance in which the question of the duty of extradition, independently of treaty obligations, was discussed occurred in 1793. In that year citizen Genet, minister of the French Republic, requested of Mr. Jefferson, Secretary of State, (1) a warrant for the arrest of certain men named Galbaud,† Tanguy, Conscience, and Bonne, who had escaped from the French war vessel

* Quoted by Mr. Van Ness, in *Holmes v. Jennison*, 14 Peters, at 548.

† 1 American State Papers, 174 to 177.

Jupiter, after (as alleged) plotting against the Republic, and (2) that necessary measures should be taken to prevent the carrying into execution of the said plots. To these requests Mr. Jefferson answered: "These two requisitions stand on different ground. The laws of this country take no notice of crimes committed out of their jurisdiction. The most atrocious offender, coming within their pale, is received by them as an innocent man, and they have authorised no one to seize or deliver him. The evil of protecting malefactors of every dye is sensibly felt here, as in other countries, but, until a reformation of the criminal codes of most nations, to deliver fugitives from them, would be to become their accomplices: the former therefore is viewed as the lesser evil." The letter concludes thus:—"I have not yet laid this matter before the President, who is absent from the seat of government; but to save delay which might be injurious, I have taken the liberty, as the case is plain, to give you this *provisory* answer. I shall immediately communicate it to the President, and if he shall direct anything in addition, or alteration, it shall be the subject of another letter. In the mean time I may venture to let this be considered as a ground for your proceeding." *

* In his judgment in *Short v. Deacon* (10 Sergeant & Rawle, at 133), Tilghman (C.J.) in reference to Mr. Jefferson's letter, above referred to, said:—"When this answer was given, General Washington was President of the United States and General Hamilton Secretary of the Treasury. It may be presumed that no change has taken place in the sentiments of the executive with

These expressions of Mr. Jefferson implied a desire for the alteration of the law upon this matter,* and may have helped to bring about the insertion of an article on the subject of extradition in the treaty, often spoken of as Jay's Treaty, which was concluded between the United States and Great Britain in 1794. This article, the 27th. was as follows :—"It is further agreed, that her Majesty and the United States, on mutual requisitions by them respectively, or by their respective ministers or officers authorised to make the same, will deliver up to justice all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided

respect to the delivering up of fugitives from Europe, because in the instructions from Mr. Monroe, Secretary of State, to our plenipotentiaries charged with negotiating a peace with Great Britain (which terminated in the Treaty of Ghent) is the following passage :—"Offenders, even conspirators, cannot be pursued by one power into the territory of another, nor are they delivered up by the latter except in compliance with treaties or by favour." Mr. Madison was President at the date of these instructions ; so that we have the opinion of every President since the formation of the government, except Mr. Adams, and it is not known, or believed, that he even dissented."

* A few years later, in 1797, the Attorney-General of the United States gave his official opinion that it was the *duty* of the United States to deliver up, on due demand, heinous offenders, being fugitives from the dominions of Spain ; and that as the existing laws of the Union had not made any specific provision for the case the defect ought to be supplied.—1 Opinions of the Att.-Gen., 46.

In 1821 a different opinion was given on similar authority.—1 Opinions, &c., 384-392.

that this shall only be done on such evidence of criminality as, according to the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive." * By the succeeding article it was provided that this clause of the treaty should only exist for twelve years. At the expiration of that time the relations between the two countries were so unfriendly that no attempt was made to renew the treaty. And the circumstances of the only case of importance in which the requisition had been made had aroused feelings in America strongly opposed to any such renewal. This was the case of Jonathan (or Nathan) Robbins,† who was demanded by the British Government in 1799, on a charge of murder. Robbins had been, some years before, one of the crew of H.M.S. *Hermione*, which was taken possession of by mutineers, who, after killing some of the officers, carried the vessel into a Spanish port. On this charge Robbins was imprisoned at Charleston, under a warrant of the district judge of South Carolina. He had been imprisoned six months when he was brought before the court on habeas corpus. The Secretary of State addressed a letter to the judge, mentioning that application had been made by the British minister to the pre-

* Public Statutes at Large of the United States. Ed. Richard Peters, viii. 129.

† Wharton's State Trials, 392-456; Bee, Adm. Rep., 267.

sident for the delivery of Robbins according to the treaty, and adding, "the president advises and requests you to deliver him up." The case having been fully heard, the judge ordered the marshal to deliver Robbins to the British consul; and he was thereupon delivered up, carried to Jamaica, tried by court-martial, and hanged in chains. Popular feeling had been greatly excited by the case, it having been alleged that he was an American citizen, that he had been impressed on board a British vessel, and that the crime was committed in endeavouring to escape from his enforced service; and although the evidence of guilt had been overwhelming, and the question carefully tried, a vigorous attack was made upon the president (Adams) for his interference in the matter. He was defended in the House of Representatives by Mr. Marshall (afterwards Chief Justice of the Supreme Court of the United States) in a speech which made the speaker famous, and which is a fine model of close and thoughtful reasoning; but the public feeling was so strong that the incident had a considerable effect on the result of the contest for the presidency between Adams and Jefferson in 1801.

From 1806 to 1842 no treaty provisions as to extradition existed between Great Britain and the United States, but during this period several cases were brought before the American tribunals, which, from the magnitude of the questions involved, and the great repute of some of the judges whose opinions were expressed, are deserving of careful note.

The first was the case of Daniel Washburn,* in 1819. Washburn was arrested in the United States, on a charge of *theft* in Canada, and was brought before Chancellor Kent upon a habeas corpus.

The chancellor held that, irrespective of all treaties, it was the duty of a state to surrender fugitive criminals. It was the duty of a magistrate, irrespective of legislative provisions upon the subject, to commit the fugitive upon due proof of the commission of a crime, so as to afford time to the government to deliver him up, or to the foreign government to claim him. If this claim were not made within a reasonable time, the prisoner would be entitled to his discharge on habeas corpus; the judicial power would have fulfilled its duty by affording the opportunity. It did not matter, he added, whether the prisoner was a subject of the pursuing government or of that under which he had taken refuge. He then reviewed at considerable length the authorities and cases on the subject; and with reference to the argument that even if the duty of extradition existed, it must be held to be limited to the cases of murder and forgery, which had been included in the treaty of 1794, he decided that that treaty was merely declaratory, and that, even if during its existence the principle "*enumeratio unius est exclusio alterius*" applied, at its expiration the general and wider law revived.

This judgment carried the doctrine of the duty of extradition to its fullest possible extent, declaring not only

* 3 Wheeler's Crim. Cases, 473; 4 Johnson, Ch. Rep., 106.

that treaties might declare or limit, but did not create it, but that it was of so high and imperative a nature that in the absence of municipal laws for its enforcement it was itself a law which judges were by virtue of the nature of their office bound to recognise and administer. No later decision has gone quite to this extent; but it is hardly correct to say that the judgment has been overruled by a superior weight of authority. The judgments usually quoted in support of this assertion are rather apparently than really opposed to the ruling of the chancellor, and even where they contradict one of his dicta they leave others of equal or greater importance untouched.* The judgment generally cited as being in clearest contradiction to the decision of Kent is that of Chief Justice Tilghman in the case of *Edward Short*.† But it will be seen on an examination of that judgment that it is by no means in direct opposition to that of Kent on one or two of the most important points. But before noticing that case it will be well (to keep the order of time) to mention the Act passed by the State of New York on 5th April 1822, and adopted and continued in the New York Revised Statutes i. 164; §§ 8, 9, 10, 11. This law authorised the governor, in his discretion, on requisition from a foreign government, to surrender up

* The principles laid down in Washburn's case were acted upon by Chief Justice Reid, in Lower Canada, in 1827. See Fisher's case, *post*, p. 88.

† Commonwealth at the instance of *Edward Short v. Deacon* 10 Sergeant & Rawle, 125.

fugitives charged with murder, forgery, larceny, or other crimes, which by the laws of the state were punishable with death or imprisonment in the state prison, provided the evidence of criminality was sufficient by the laws of the United States to detain the party for trial on a like charge.* The case of Edward Short was tried before the Supreme Court of Pennsylvania in August 1823. Short was charged with having committed murder in Ireland, and was arrested in Pennsylvania at the suit of a private person, without the interference of either the government of Great Britain or that of the United States. The question for the consideration of the court was twofold: 1. Was the evidence sufficient? 2. Was the commitment legal? Upon the first branch of the question the judgment was short and unimportant, but the second branch was fully considered. Chief Justice Tilghman, in delivering judgment, reviewed the old authorities on the subject, not finding in them so strong a concurrence of opinion in favour of the duty of extradition as had been declared by Chancellor Kent.† He urged the difficulty of establishing any common rule, arising from the different estimation of crimes in different nations, and concluded that upon the whole the safest principle seemed to be that no state had an *absolute* and *perfect* right to demand of another the delivery of a fugitive criminal, although it had what is called an *imperfect* right, that is, a right to ask it as

* See *post*, p. 78.

† With reference to Lord Coke's opinion, see *ante*, p. 7.

a matter of courtesy, good-will, and mutual convenience. But a refusal to grant such request would be no just cause of war. No state, he said, had a right to ask the delivery of a fugitive for the purpose of wreaking its vengeance upon him. "All that can be said is, that unless he be given up, others may be encouraged to transgress by the hope of escaping punishment, and thus an injury may be sustained. And, indeed, in the case of neighbouring nations the argument is so strong as to be almost irresistible, except in cases attended with peculiar circumstances." He differed from Kent as to the treaty of 1794 being merely declaratory, and laid down that "the treaty gave each nation a right which did not before exist, and which ceased at its expiration." The delivery up of a fugitive was an affair of the executive government, to which the demand of the foreign power must be addressed. The judges could not legally deliver up, nor could they command the executive to do so. No magistrate in Pennsylvania had the right to cause a person to be arrested in order to afford the President of the United States an opportunity to deliver him up, because the government had already declared that it would not do so. If the executive hereafter should be of opinion that it had the right, and was bound in duty to give a criminal up, that would be a different case, and one on which the court at present would give no opinion.

Every nation had an undoubted right to surrender fugitives; but the question then would be, whether the President could act in such a case, or must wait for power

to be given him by law? Hitherto he had believed he had not the power: if he should change that opinion, the question of his right to act would then be for the judges to decide. "Neither do I give any opinion," said the Chief Justice in conclusion, "whether the executive of the State of Pennsylvania has the power to cause a fugitive criminal to be arrested for the purpose of delivering him up. But confining myself to the case before me, in which the arrest is made at the request of a private person, I am of opinion that there is no law to support it, and therefore the prisoner is entitled to his discharge." It will be seen, on a careful examination of this decision, that the reasons for it may almost be termed 'technical. The two leading doctrines in Kent's judgment were that the duty of extradition existed independently of any treaties; and that, being a part of international law, it was *ipso facto* a rule of municipal law, and one which judges were bound to administer. Upon the first point, Chief Justice Tilghman, while denying that extradition was a matter of perfect right, conceded that it was an international duty which, between neighbouring nations, was of almost irresistible obligation; and, as to the second point, he went no further than to deny the right of the judges to arrest a fugitive when the executive had already declared that it could not order his extradition. The allusion to the fact that in this case the arrest had been made at the suit of a private person, in no way representing a foreign government, made the decision still less valuable as a precedent.

In 1835 and 1837 two cases came before the courts

involving very similar questions, and decided by very able judges, one of them perhaps the greatest jurist America has produced, but the negative conclusions stated in their judgments carried the law no further. The first of these cases was that of José Ferreira dos Santos, which came before Judge Barbour in the Circuit Court of Virginia in the November term of the year 1835. The prisoner, who was a Portuguese subject, was committed for trial under a charge of piracy, and the grand jury threw out the bill. An application was then made by the Portuguese chargé d'affaires, that he might be detained until the government of Portugal should have time to make a demand on that of the United States for his surrender upon the charge of having committed murder in his native country. The question before Judge Barbour was, whether it was proper or competent for the court to detain him in prison for that purpose. He decided in the negative, and discharged the prisoner, saying: "I am of opinion that, without a treaty stipulation, this government is not under any obligation to surrender a fugitive from justice to another government for trial; and that, as a judicial officer of the United States, I have no authority whatsoever either to arrest or detain with a view to such surrender." *

In 1837, in the district court of the United States for the Massachusetts district, a prisoner charged with manslaughter was acquitted upon the ground that the offence was committed within the jurisdiction of a foreign govern-

* 2 Brockenborgh and Marshall, 493 (Circ. Court of U. S., Va. 1835).

ment; and it was then suggested by the district judge, not by any representative of the foreign government (the Society Islands), that the court should remand him to that government for trial. Mr. Justice Story, to whom the suggestion was made, said that he had never known any such authority exercised by the American courts, except where the case was provided for by the stipulations of some treaty. He had great doubts whether, upon principles of international law, and independent of any statutable provisions or treaty stipulations, a court was either bound in duty or authorised in its discretion to surrender any offender to a foreign government. The prisoner was thereupon discharged.*

The general executive having declared its inability to grant extradition, an attempt was now made to use the powers of a state executive for this purpose. In 1840 an application was made to the President of the United States for the extradition of one Holmes, a naturalised citizen of the United States, who was charged with having committed murder in Lower Canada. The President declined to act, through an alleged want of power, and the case came back to Governor Jennison of Vermont. Holmes, having been arrested, obtained a writ of habeas corpus from the Supreme Court of Vermont, and the sheriff returned that he was detained under an order of the Governor of Vermont, which commanded the sheriff to deliver him up to the authorities of Lower

* U. S. v. Davis, 2 Sumner, 485; 1 Opinions of Att.-Gen., 510; 2 Opinions of Att.-Gen., 359.

Canada. The Supreme Court of Vermont held the return sufficient, and remanded Holmes into custody. On appeal to the Supreme Court of the United States, two questions were argued: 1. Whether an appeal would lie. 2. Whether the judgment of the Supreme Court of Vermont was right.

In the result the judges were equally divided, and the appeal was dismissed for want of jurisdiction. But the Supreme Court of Vermont, finding that the majority of the judges of the higher court held that the Governor of Vermont had no authority to arrest and deliver up fugitives, discharged the prisoner.*

After this judgment, it was clear that foreign governments could not, in the absence of treaty stipulations, obtain from the United States the extradition of fugitive criminals.† It had been decided that the delivery up of a fugitive was an act of state within the power of the national executive only; and that the executive having declared itself unable to act in the matter, the judges would not be justified in ordering useless arrests. Whether the President had not, in the absence of special laws, the right to act as the representative of the nation had never been decided; but the effect of Robbins's case was not yet forgotten, and American politicians did not care to risk their popularity merely for the sake of testing a disputed power.

* *Holmes v. Jennison*, 14 Peters, 540. *Ex parte Holmes*, 12 Verm. Reps., 630. Kent expresses strong disapproval of this decision.—Comm. i. 43.

† 3 Opinions of Att.-Gen., 661 (Legare).

In the circular upon the subject of extradition issued on the 5th April 1841,* the French minister of justice mentioned the four treaties then in existence between France and Spain, Switzerland, Belgium, and Sardinia, and said that from other countries France could obtain extradition, even in the absence of treaties, except from Great Britain and the United States. The first did not grant extradition because its legislation did not allow it; the second because it was not yet settled whether the right of surrender belonged to the different states or to the general government. Both countries soon remedied, at least partially, this grave defect in their laws.

Negotiations had already been commenced between the United States and Great Britain for the conclusion of a convention upon this subject; and in the Ashburton Treaty, which was signed at Washington on the 9th August 1842,† and ratified at London on the 13th October of the same year, a clause was inserted which repeated the provisions of the twenty-seventh section of the treaty of 1794,‡ and extended them to other crimes.

By the tenth article of the Ashburton Treaty, it was "agreed that the United States and her Britannic Majesty shall, upon mutual requisitions by them or their ministers, officers, or authorities,§ respectively made,

* Dalloz, *Jurisp. Gén.* (1841), iii. 440, § 1. Fœlix, ii. 3, and see *post*, p. 180.

† 8 *Stats. at Large*, 572. 6 Hertslet, *Commercial Treaties*, 862.

‡ See *ante*, p. 36.

§ The requisition upon Great Britain must now be made by a diplomatic representative of the United States, 33 & 34 *Vict.*,

deliver up to justice all persons who, being charged * with the crime of murder, or assault with intent to commit murder or piracy, or arson, or robbery, or forgery, or the utterance of forged paper,† committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed; and the respective judges and other magistrates of the two governments

c. 52, §§ 7, 27. That includes a Consul-General, 36 & 37 Vict. c. 60, § 7.

* An application by Great Britain under this treaty need not be founded on any indictment found before a British tribunal, nor on any warrant issuing therefrom. It is not necessary that any examination should have taken place in Great Britain. See note to Metzger's case, 1 Barbour, 269. See also *Re François Farez*, 7 Blatchford, Circuit Court Reps., 34, 345, 491. 2 Abbott, U. S. Digest, 346.

† In 1859 the United States Government made a proposal to Great Britain to amend the treaty by adding to it the offences of coining, uttering false money, and embezzlement. The British Government assented, and forwarded draft articles to Washington. The United States Government, however, desired to limit embezzlement to that of public moneys, and as this would have made the amendment of little use, the British Government refused to accept the limitation. On the other hand, the United States objected to the stipulation that the execution of the new arrangement must depend upon the sanction of Parliament being obtained. The negotiations thereupon were abandoned.—Evidence of Rt. Hon. E. Hammond, Report of Select Comm., 1868, 54.

shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive, or person so charged, that he may be brought before such judges or other magistrates respectively—to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitives. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.”

In this clause there is no specific exclusion of political crimes such as will be found in the later convention with France; but in transmitting the treaty to the Senate for consideration, President Tyler said,—“The article on the subject (extradition) in the proposed treaty is carefully confined to such offences as all mankind agree to regard as heinous, and destructive to the security of life and property. In this careful and specific enumeration of crimes, the object has been to exclude all political offences or criminal charges arising from wars or intestine commotions.”

In England, the common law being held not to permit the surrender of a criminal, this provision could not come into effect without an Act of Parliament; but in the United States a treaty is as binding as an Act of Con-

gress; and this article was immediately put in force. Christiana Cochran (alias Gilmour), a Scotchwoman, accused of having murdered her husband, fled to America by the very ship which conveyed thither the ratifications of the Ashburton Treaty. She was arrested, and her counsel raised a point which has often been discussed since in cases of extradition. He asked to be allowed to prove the prisoner's insanity. After full consideration, the court refused to try the question, and the prisoner was surrendered.*

On the 9th November 1843 a convention was concluded at Washington between the United States and France,† by which it was agreed:—

“Art. 1. That the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in the next following article, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall

* Egan, 46; St. Alban's Raid, 229; Fœlix, ii. 357, *n.* Fœlix says,—“Une femme accusée d'empoisonnement avait passé de Liverpool à New York; pour refuser l'extradition, on faisait valoir son état d'aliénation mentale.” The statement in the text is given upon the authority of Egan; but it would appear from a reference to the case made by Mr. Cushing when Attorney-General, that the court did try the question of the prisoner's sanity. He says that her counsel set up “a plea of insanity, which, after a full and impartial *investigation*, was overruled.”—4 Opinions of Att.-Gen., 202 (Cushing). The most instructive case upon the subject of the production of evidence for the prisoner is that of the St. Alban's Raid. See *post*, p. 100.

† 8 Stats. at Large, 582.

be found within the territories of the other: Provided, that this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country* in which the fugitive or the person so accused shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

“Art. 2. Persons shall be so delivered up who shall be charged, according to the provisions of this convention, with any of the following crimes, to wit: murder (comprehending the crimes designated in the French penal code by the terms assassination, parricide, infanticide, and poisoning), or with an attempt to commit murder, or with rape, or with forgery, or with arson, or with embezzlement by public officers,† when the same is punishable with infamous punishment.

“Art. 3. On the part of the French government the surrender shall only be by authority of the keeper of the seals, minister of justice; and on the part of the govern-

* The word “place” used in the Ashburton Treaty was better than “country,” as in America the law is different in different states. “The word ‘country,’ necessarily, under our form of government in carrying out the provisions of the convention, means the special political jurisdiction that has cognizance of the crime. In this case the forms of proceeding that must be observed are those of the State of New York.”—Blatchford, J., in *Re François Farez*, 7 Blatchford, Circ. Court Rep., 357.

† Persons who discharge the functions of government as such, who are appointed by or officially responsible to it, and who thus enter into the organisation of the government.—8 Opinions of Att.-Gen. (Cushing), 108.

In the French the term is “*dépositaires publics*.”

ment of the United States, the surrender shall be made only by the authority of the executive thereof.

“Art. 4. The expenses of any detention and delivery effected in virtue of the preceding provisions, shall be borne and defrayed by the government in whose name the requisition shall have been made.

“Art. 5. The provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof, nor to any crime or offence of a purely political character.”

On the 24th of February 1845 the following additional article to the above convention was concluded at Washington :—

“The crime of robbery, defining the same to be, the felonious and forcible taking from the person of another, of goods or money to any value, by violence or putting him in fear ; and the crime of burglary, defining the same to be, breaking and entering by night into a mansion-house of another, with intent to commit felony ; and the corresponding crimes included under the French law in the words *vol qualifié crime** not being embraced in the second article of the convention of extradition concluded between the United States and France on the 9th of November 1843, it is agreed by the present article, between the high contracting parties, that persons charged

* Robbery committed with violence or menaces, or committed in a dwelling-house with circumstances either of night and of escalation or of “effraction.”—7 Opinions of Att.-Gen., 643 (Cushing).

with those crimes shall be respectively delivered up, in conformity with the first article of the said convention ; and the present article, when ratified by the parties, shall constitute a part of the said convention, and shall have the same force as if it had been originally inserted in the same." *

It was not at first thought necessary to have an Act of Congress to carry these treaties into effect, and two cases were decided in the absence of any such Act. In the case of Thomas Sheazle and others (known as the "British Prisoners' Case, 1845"), it was held that, under the authority of the treaty of 1842, persons charged with piracy committed contrary to Acts of Parliament and on board a British vessel, might be arrested in the United States, examined before a State magistrate, and, if believed guilty, remanded into custody, with a view to their surrender to Great Britain.† The authority of the state judiciary was however, denied in the case of Nicholas Lucien Metzger,

* 8 *Stats. at Large*, 617. 1 *Bright*, 270. A supplemental convention between the United States and France, signed the 10th February 1858, extended the provisions of the treaty to principals, accessories, and accomplices in the following crimes : " Forging, or knowingly passing or putting in circulation counterfeit coin or bank-notes, or other paper current as money, with intent to defraud any person or persons; embezzlement by any person or persons in the employ of a society or corporation legally constituted—when these crimes are subject to infamous punishment." 11 *Stats. at Large*, 741. 2 *Bright*, 134. It is somewhat singular that fraudulent bankruptcy is excluded from nearly all the treaties of extradition of the United States, though included in those of most European nations.

† *First Circ. (Mass.)*, 1845. 1 *Woodbury and Minot*, 66.

who was accused of having committed forgery in France and whose extradition was demanded by that country in 1847. The French minister first applied to the executive, who declined to interfere in the matter, and referred him to the judicial authorities. Metzger was then arrested and brought before a local magistrate of New York, who decided that he had authority over the case, and committed him to prison; but he was liberated by a circuit judge of that state, who held that the state judiciary had no jurisdiction. He was then brought before Judge Betts, a district judge of the United States, sitting in chambers, who committed him, after hearing a full argument. Judge Betts held that, as the treaty was the supreme law of the land, it was entitled, when coming before the courts, to the same effect as an Act of Congress, though no Act had been passed to define the method of its operation; that under such treaty a fugitive was subject to apprehension and commitment for a crime committed after the date of the signature of the treaty against the laws of the country demanding him, whether such crime were an offence in the country to which he had fled or not; and that whether the *casus fœderis* had arisen, or whether the compact would be executed, was a political question to be decided by the President, the courts having power to direct or contravene his decisions in the first instance.* Whether

* "I further adjudge that the said treaty took effect and went into operation on and from the day of the signature thereof.

"I further adjudge that the Laws of France are to determine the constituents of the crime of forgery, or *du faux*, of which Metzger is accused, and that the facts in evidence adequately

the judiciary had authority on habeas corpus, after the fugitive was under arrest, to prevent his extradition, if the President decided to make it, was not decided.

The prisoner then petitioned the Supreme Court of the United States, for a habeas corpus. After elaborate arguments by Mr. Coxe for the prisoner, and the Attorney-General (Mr. Clifford) against, Mr. Justice M'Lean delivered the judgment of the court. He said that the surrender of fugitives from justice was a matter of conventional arrangement between states, as no such obligation was imposed by the law of nations. Under the provisions of the constitution, the treaty was the supreme law of the land; and, in regard to the rights and responsibilities growing out of it, might become the subject of judicial cognizance. The executive had, therefore, acted rightly in referring the matter to the judicial power. The district judge at chambers exercised a special authority, and the law had made no provision for the revision of his judgment. The Supreme Court, in issuing the writs asked for, would exercise an original jurisdiction; and that Congress had not given, if, indeed, it had the power to give it. The writs were, therefore, refused.

The president thereupon issued his mandate to the marshal of New York commanding him to surrender Metzger to the diplomatic agents of the French Government. Before, however, the surrender was actually made a writ of habeas corpus was obtained from Judge Ed-
prove the commission of that crime by him in France since the date of the treaty."—Order of Judge Betts, 5 Howard, 117.

monds, circuit judge of the Supreme Court of New York. + He decided that, in the absence of legislative enactment, neither the executive nor the judicial power had any authority to act upon the treaty of 1843. And that the words in the French treaty being "mis en accusation," the terms "charged" and "accused" in the American version must be so construed as to make them equivalent to that phrase. As that means "indicted" or "arraigned" after examination by the Chambre de Conseil, the prisoner against whom there was simply a complaint made and warrant issued was not within the treaty. He was therefore discharged.*

• This decision is obviously quite technical; but it is possible that some of the doubts expressed in the case may have led to the passing, in the following year, of the Act of 12th August 1848. "The Act was passed," says Mr. Justice Catron,† "not to give effect to the treaty, but to remove obscurities." The title of the Act is, therefore, clearly a mistake, for it is entitled "An Act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders." Its provisions are sufficiently important to be given at length ‡ :—

* S. District of N. Y. (1847). 1 Barbour, 248. 5 Howard, 176. 5 New York Legal Observer, 83. Wharton's State Trials, 457, n. See *Ex parte* Milburn, 9 Peters, 705.

† In judgment in Kaine's case, 14 Howard, 109.

‡ This Act is now replaced by sections 5270–5274 of the Revised Statutes of 1874, supplemented by the Act of August 3rd 1882 (22 U. S. Stat. at Large, 215). The later legislation adds circuit

“ Be it enacted, by the Senate and House of Representatives of America, in Congress assembled :—

“ Sect. 1. That in all cases in which there now exists, or hereafter may exist, any treaty or convention for extradition between the government of the United States and any foreign government, it shall and may be lawful for any of the justices of the Supreme Court, or judges of the district courts of the United States, and the judges of the several State courts, and the commissioners, authorised so to do, by any of the courts of the United States, are hereby severally vested with power, jurisdiction, and authority, upon complaint made under oath or affirmation, charging any person found within the limits of any state, district, or territory, with having committed within the jurisdiction of any such foreign government any of the crimes enumerated or provided for by any such treaty or convention,—to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or commissioner, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge under the provisions of the proper

judges to the judicial authorities mentioned in sect. 1 of the Act of 1848, and makes any depositions, warrants, or other papers or copies thereof (sect. 5 of Act of 3rd August 1882) receivable at the hearing, if certified by the principal diplomatic or consular officer of the United States resident in the foreign country from which the accused shall have escaped, to be so authenticated as to be entitled to be received for similar purposes by the tribunals of that foreign country.

treaty or convention, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government for the surrender of such person, according to the stipulations of the said treaty or convention ; and it shall be the duty of the said judge or commissioner to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until such surrender shall be made.

“ Sect. 2. And be it further enacted, That in every case of complaint as aforesaid, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any such foreign country may have been granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended.

“ Sect. 3. And be it further enacted, That it shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person or persons as shall be authorised, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly ; and it shall be lawful for the person or persons authorised as aforesaid to hold such person in custody.

and to take him or her to the territories of such foreign government, pursuant to such treaty : and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he or she shall so escape may be retaken on an escape.

“Sect. 4. And be it further enacted, That when any person who shall have been committed under this Act, or any such treaty as aforesaid, to remain until delivered up in pursuance of a requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the gaol to which he or she may have been committed, by the readiest way, out of the United States, it shall, in every such case, be lawful for any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such judge why such discharge ought not to be ordered.

“Sect. 5. And be it further enacted, That this Act shall continue in force during the existence of any

treaty of extradition with any foreign government, and no longer.

"Sect. 6. And be it further enacted, That it shall be lawful for the courts of the United States, or any of them, to authorise any person or persons to act as a commissioner or commissioners under the provisions of this Act; and the doings of such person or persons, so authorised in pursuance of any of the provisions aforesaid, shall be good and available to all intents and purposes whatever." *

The principal case which has been decided under the treaty with Great Britain was that of Thomas Kaine in 1852. Kaine was an Irishman, and was charged with an attempt to commit murder in Ireland. In June 1852 Anthony Barclay, the British consul at New York, addressed a requisition and complaint to Judge Betts, stating that it had been represented to Mr. Barclay, and was believed by him, that Kaine did in Ireland, on or about the 5th April 1851, fire a pistol at one James Balfe with intent to murder him; that a warrant to apprehend him was issued by a magistrate of the peace. but that the said Kaine had absconded and fled to the United States. The requisition further stated that the crime of which he had been guilty would have justified his apprehension and commitment for trial if it had been committed in the United States. It then asked that a warrant for his apprehension might be issued, to the end that the evidence of his criminality might be heard and considered; and if on such hearing the evidence should

* 9 Stats. at Large, 302; 30 Congress, Sess. 1, ch. 167.

be deemed sufficient, that it should be certified to the proper executive authority, in order that a warrant might issue for his surrender under the treaty between the United States and Great Britain. A warrant was accordingly issued, under which Kaine was brought before Joseph Bridgham, a commissioner of the United States at New York. No witness as to the fact was called, but a policeman produced copies of the warrant of the Irish magistrate, and the deposition on which it was granted, and proved their correctness, and he also proved the identity of the prisoner; on this evidence Kaine was committed. A habeas corpus was then obtained returnable before the Circuit Court of the United States for the southern district of New York; but Judge Betts, after hearing arguments, remanded the prisoner into custody. Upon this the Acting Secretary of State issued his warrant directing the marshal to deliver Kaine up to the British consul, but another habeas corpus was obtained from Judge Nelson, and, upon return made, was by him referred to the Supreme Court, where the matter was fully argued. The court, however, refused to decide the case so referred, on the ground that to do so would be to exercise an original jurisdiction which the court did not possess. An application for a writ of habeas corpus was at once made to the Supreme Court by way of appeal from the decision of the Circuit Court. Upon this, the court was divided. Of the judges who took part in the decision, one (Mr. Justice Curtis) held that the Supreme Court had no jurisdiction in the matter; four (Catron,

M'Lean, Wayne, and Grier) refused the application for release upon the merits; and the other three (Chief-Justice Taney, and Justices Nelson and Daniel) held that it should be granted. Their reasons were that the commissioner, not being specially appointed for the purposes of the Act, had no jurisdiction; that no judge or commissioner could act on the complaint of a private person; and that, there being no proof of the authority of the Irish magistrate, no competent evidence had been produced. The majority of the court, however, holding these reasons insufficient, the prisoner was remanded. The writ issued by Mr. Justice Nelson, which the Supreme Court had refused to consider, still remained for adjudication, and the matter was argued at chambers. It was there objected, that the decision of Judge Betts sitting in the Circuit Court, upon the return of the writ of habeas corpus before that court, was conclusive, and a bar to any subsequent inquiries into the same matters by virtue of a similar writ. Justice Nelson overruled this objection, and the case was re-argued before him. Opportunity was given to the counsel for the British Government to furnish proof that the prisoner's arrest had been authorised by the President of the United States, but he was not prepared to do so. Justice Nelson accordingly discharged the prisoner upon the three grounds stated in his judgment in the Supreme Court.*

* 3 Blatchford, Circuit Court Reps., 1. 14 Howard, 103. 10 New York Legal Observer, 257. 1 Robinson's Practice, 10. 6 Opinions of Att.-Gen. 93. 1 Phillimore, Comm. 430.

The failure of justice in the case just stated caused an alteration in the practice of the United States. In August 1853 the British Minister requested that the President would issue his mandate to certain magistrates to cause William Calder, charged with forgery in Great Britain, to be arrested and examined, and if the charge should be sustained to certify the same to the President, to the end that the said William Calder should be surrendered. The application was submitted to the Attorney-General (Cushing), who advised that, although the issue of such a mandate would be a departure from recent practice, and in his judgment was unnecessary, yet that, considering the opinions expressed by some of the judges in *Kaine's* case, the request should be granted, and that a mandate should issue whenever desired by the government claiming the surrender. In obedience to the mandate thereupon issued, a warrant of arrest was granted by Judge Edmonds, of the Southern Circuit of the State of New York, Calder was arrested and examined, and the judge certified that there was not sufficient evidence to justify his surrender. The British Minister then applied to the United States Government to give directions that the prisoner should be detained for the time required to produce further evidence. The Attorney-General being again consulted, advised that the President had no power to do this; but that the British Minister could apply at any time for a new warrant of arrest, either with or without a new mandate.

* 6 Opinions of Att.-Gen. (Cushing), 91.

The judgment of Justice Nelson in the case of Kaine has been referred to in later cases, and by some American writers as deciding that it was within the competence of the court, before which a prisoner might be brought by habeas corpus, to decide upon the sufficiency of the evidence upon which the judge or commissioner taking the examination had acted. The observations of Justice Nelson did no doubt go to this extent. "The proof," he said, "in all cases under the treaty of extradition should be not only complete, but full and satisfactory, that the offence has been committed by the fugitive in the foreign jurisdiction; sufficiently so to warrant a conviction in the judgment of the magistrate of the offence with which he is charged, if sitting upon the final trial and hearing of the case. No magistrate should order a surrender short of such proof." But the actual decision does not touch this question at all. Justice Nelson held that the commissioner had no authority to commit, as there was before him no evidence at all which could legally be received. It was obviously quite consistent with this decision that the decision of the commissioner should be final as to the sufficiency of any evidence properly before him. And this latter doctrine was expressly affirmed in the next case which came before the court, that of Alexander Heilbronn. In this case Judge Ingersoll, in the District Court of the United States for the southern district of New York, followed the decisions of Judge Judson in the case of Veremaitre,* and Judge Betts in the case of Kaine

* 9 New York Legal Obs., 137.

and refused to entertain the question of the sufficiency of the evidence upon which the commissioner had acted, remarking, "Where there is legal evidence before the commissioner to establish the charge, and that legal evidence is deemed by him sufficient, no matter how many others may deem it insufficient, and he grants a warrant of commitment, that commitment must stand, and no judge has a right to disregard it, or to render it ineffectual, at least not until the expiration of two calendar months after it shall have been issued. In such a case, no one can revise the opinion of the commissioner except the President. The President has that power. If he should be of opinion that the evidence taken before the commissioner at the hearing was not sufficient to sustain the charge, then it would be his duty to withhold a warrant of extradition. If it should be his opinion that it was sufficient, then it would be his duty to grant such warrant. The necessities of this case, therefore, do not require that I should express an opinion upon the sufficiency of the evidence upon the hearing before the commissioner." *

The necessities of the case did not require these observations about the duty of the President, and they are of little weight. The rights and duties of the President are settled, and limited by the terms of the treaties and the Acts of Congress passed to give them effect, and it clearly is neither his right nor duty to assume a function which those treaties and acts have assigned to the judicial

* 12 New York Legal Obs., 65.

power. Judge Ingersoll's decision was followed in the case of Von Aernam, which occurred very shortly after. The prisoner was charged with uttering forged documents in Canada, and upon examination the commissioner held the evidence sufficient, and committed him to prison to await surrender. A writ of habeas corpus was obtained from Judge Betts, District Judge of the Circuit Court of the United States, and upon the return of this writ it was desired on the part of the prisoner to discuss the sufficiency of the evidence before the commissioner. Judge Betts refused to entertain this question, declaring that the courts of the United States had no authority on habeas corpus to inquire into the merits of a decision made by a committing magistrate, or to determine that he erred in the construction of law or the evidence. He added: "In my view of the subject, this court, on the return before it of a writ of habeas corpus, has no further power than to ascertain and determine whether the prisoner stands charged with a criminal offence subjecting him to imprisonment, and whether the commissioner possessed competent authority to inquire into and adjudge upon that complaint." Answering these questions in the affirmative, and holding that he had no authority under the writ to review the justness of the decision of the commissioner, he remanded the prisoner.*

In 1864 occurred the notable case of Franz Müller, who

* *Ex parte* Von Aernam, 3 Blatchford, Circ. Court Reps., 160. See also *Reg. v. Van Aernam*, U. C. Reps. 4 C. P. 288, *post* p. 110. Von Aernam was a citizen of the United States.

was demanded by Great Britain on a charge of murder. It will be remembered that the police-officer who was in pursuit reached America first, and arrested the fugitive immediately he arrived. Being brought before Commissioner Newton at New York, Müller asked for time to produce witnesses from England to prove an *alibi*, the defence afterwards unsuccessfully set up at the Central Criminal Court. The commissioner refused the request on the ground that it was not his province to determine the question of fact. The evidence before him showed probable cause for believing Müller to have committed the crime, and that was the only question he had to try.

The operation of extradition treaties being found to be impaired by the requirements of the American law with regard to evidence, an Act of Congress was passed on the 22nd June 1860, similar to that which was afterwards found necessary in England.* It provided, "That in all cases where any depositions, warrants, or other papers, or copies thereof, shall be offered in evidence upon the hearing of an extradition case under the second section of the Act, entitled, 'An Act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders,' approved August 12, 1848, such depositions, warrants, or other papers, or copies thereof, shall be admitted and received for the purposes mentioned in the said section, if they shall be properly and legally authen-

* 29 & 30 Vict., c. 121. Now repealed by the Extradition Act, 1870, Appendix, p. iii.

ticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped; and the certificate of the principal diplomatic or consular officer of the United States, resident in such foreign country, shall be proof that any paper or other document so offered, is authenticated in the manner required by this Act" (36 Cong., Sess. 1, ch. 184; 12 U.S. Stats. at Large, 84).

Since the conclusion of the treaties with Great Britain and France, the United States have entered into many other agreements of a similar nature. In 1845, a treaty with Prussia was negotiated by Mr. Wheaton, but it was rejected by the senate in consequence of the requirement of Prussia that neither power should be obliged to give up its own subjects. America has never desired to make, or been willing to admit, this reservation,—which, however, is insisted upon by the majority of European States. It was felt that as the United States did not try its citizens for crimes committed abroad, and the other parties to the treaty did, this proviso would produce a want of reciprocity, and that difficulties would probably arise, specially likely in, and important to, the United States, with regard to the case of naturalised subjects. The objection was, however, waived, and a treaty was made in 1852 between the United States and Prussia, acting for herself, and also on behalf of Saxony, Electoral Hesse, Ducal Hesse, Saxe-Weimar, Eisenach, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg Gotha, Brunswick, and several of the other petty German States. It provided that the stipulations it con-

tained should apply to any other State of the Germanic Confederation which might thereafter declare its accession thereto. This treaty recites, "That whereas the laws and constitution of Prussia, and of the other German States, parties to this convention, forbid them to surrender their own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States;" and its provisions include the crimes of murder, assault with intent to commit murder, piracy, arson, robbery, forgery, the utterance of forged papers, the fabrication or circulation of counterfeit money, whether coin or paper money, and the embezzlement of public money.*

In the year 1863 one Trangott Müller was arrested and brought before Judge Leavitt, Circuit Judge of the United States for the southern district of Ohio, having been charged before the Royal Court of Saxony with one of the crimes included in the Prussian treaty of 16th June 1852. Neither the judge nor the counsel for the Government of Saxony was aware of the Act of June 1860, and after a day's argument, the evidence of criminality was rejected as not sufficient under the second section of the Act of August 1848. The Prussian Government complained of this decision, and the case was referred to the Acting Attorney-General, Mr. T. J. Coffey. Admitting that the Judge was wrong, Mr. Coffey pointed out that there was no appeal from his decision, but he sug-

* 10 Stats. at Large of U. S., 965.

gested that a fresh authority for Müller's arrest should be issued by the Government of the United States. This was done; Müller was re-arrested and brought before Judge Cadwalader at Philadelphia, under whose decision he was surrendered to the Prussian Government.*

Of the other treaties into which the United States have entered, those with Bavaria, (1853,) Hanover, (1855,) the Two Sicilies, (1855,) Austria, (1856,) Baden, (1857,) Sweden, (1860,) Mexico, (1861,) Hayti, (1861,) Salvador, (1870,) Peru, (1870,) the Ottoman Empire, (1874,) Spain, (1877,) the Netherlands, (1880,) and Belgium, (1882,) contain the exception as to extradition of citizens or subjects; and those with the Hawaiian Islands, (1849,) the Swiss Confederation, (1850,) Venezuela, (1861,) the Dominican Republic, (1867,) Italy, (1868,) Nicaragua, (1870,) Orange Free State, (1871,) and Ecuador, (1872,) omit it. All contain provision as to the evidence required similar to that in the treaties with Great Britain and France.†

In 1858 a claim of extradition was made upon the United States by Great Britain in the case of William Tyler, a United States Marshal, who, on the 29th Nov. 1858, boarded the United States brig *Concord* when lying in Canadian waters, and in the course of a scuffle shot the master of the vessel. He then arrested him, and had him conveyed to the United States' shore, where the prisoner died. Lord Napier, then the British Ambassador, claimed the surrender of Tyler for murder com-

* 10 Opinions of Att.-Gen., 501.

† Wheaton, 6th edit. (Lawrence), 180; 8th edit. (Dana), 190.

mitted within British jurisdiction. But it was answered that the master having died in Michigan, the offence was triable by the United States' courts. The surrender, however, was not absolutely refused, but Lord Napier having consented to await the result of the proceedings about to be instituted in Michigan, a warrant of arrest was granted to him to be used in case such proceedings should end in the discharge of the accused. Tyler was then tried by the Federal Circuit Court for the district of Michigan, was convicted of manslaughter, and was sentenced to thirty days' imprisonment and a fine of one dollar. The British Government protested against this sentence as inadequate, and at the end of his thirty days' imprisonment Tyler was again arrested and sent for trial to the State Circuit Court of St. Clair County. He pleaded *autrefois* convict, and the prosecution replied that the offence charged was the same for which he had been convicted, but that it was not within the jurisdiction of the Federal Court by which he had been tried. Upon demurrer to this replication the question of law was referred by the Circuit judge to the Supreme Court of Michigan, which decided against the prisoner, holding that the Federal Court had acted without jurisdiction. Tyler was accordingly tried in Nov. 1859, and was convicted of murder in the second degree, and sentenced to six years' imprisonment. At this trial a bill of exceptions was tendered to the judge's ruling, and a stay of proceedings obtained. The case was argued before the Supreme Court of Michigan on the 1st May 1860, and the judge's ruling affirmed. The British

Government being satisfied with the second sentence, took no further steps in the matter.*

✓ A remarkable case of extradition, independently of any treaty, occurred in the United States in 1864. One Arguelles, a Spaniard, being governor of a district in Cuba, in which a cargo of Africans had been landed from a slave ship and set free by the authorities, reported to the Government that one hundred and forty-one of them had died of the small-pox; but it was discovered that he had sold them into slavery, with the aid of forged papers, and having thus obtained a large sum of money, had escaped to New York. At the request of the Captain-general of Cuba and the Spanish Minister, Mr. Seward, with the President's sanction, ordered the arrest and delivery up of Arguelles, as a purely executive act. The Senate passed a resolution, of 28th May 1864, requesting the President to inform them whether such a surrender had been made, and if so, under what authority of law or treaty it was done. The President enclosed in his reply a report from Mr. Seward, and documents showing the guilt of Arguelles, and the request of the Spanish Government. Mr. Seward, in his report, says, "There being no treaty of extradition between the United States and Spain or any Act of Congress directing how fugitives from justice in Spanish dominions shall be delivered up, the

* The People v. William Tyler, 7 Michigan Reps. (Cooley), 161. 8 Michigan Reps. (Cooley), 320. 9 Ops. Att.-Gen., 379 (Black). Evidence of H. T. Holland and Rt. Hon. E. Hammond, Report of Select Committee, 1868, 50, 58.

extradition in this case is understood by this department to have been made in virtue of the law of nations and the Constitution of the United States. Although there is a conflict of authorities concerning the expediency of exercising comity towards a foreign government, by surrendering at its request one of its own subjects charged with the commission of crime within its territory, and although it may be conceded that there is no national obligation to make such a surrender upon a demand therefor, unless it is acknowledged by treaty or by statute law, yet a nation is never bound to furnish asylum to dangerous criminals, who are offenders against the human race; and it is believed that if in any case the comity could with propriety be practised, the one which is understood to have called forth the resolution furnished a just occasion for its exercise," (U.S. Dipl. Corr. 1864, part ii. 60-74. Cong. Globe, 1864.)

A resolution, condemning this act as a violation of the Constitution, and in derogation of the right of asylum, was defeated in the House of Representatives by a large majority, and the subject referred to a committee; but Congress took no further action in the matter. Legal proceedings were commenced against the officer who executed the Secretary's warrant on a charge of kidnapping, but these also were abandoned, and the matter has not in any way come under judicial decision.*

* Wheaton, 8th edit. (Dana), 183, n. In the notable case of the Bank of England forgeries in 1872, the Spanish Government acted on this precedent and delivered up Austin Bidwell, who had

It seemed probable that the series of decisions, stated a few pages back, would have been accepted as establishing the inability of the Circuit Court to entertain the question of the sufficiency of the evidence upon which the Commissioner had acted.

But in a case which occurred in 1866, these authorities were overruled in a curiously summary way. This was the case of Philip Henrich, who had been claimed by the Prussian Government under the treaty of 1852 for forgery, and who had after examination before a Commissioner been committed to prison to await surrender. A writ of habeas corpus was issued from the Circuit Court for the southern district of New York, and the old question as to the competence of the court to review the evidence of criminality was again fully argued.

Judge Shipman, who heard the case, quoted the judgments in the successive cases of Veremaitre, Kaine, Heilbronn, and Von Aernam, and overruled them all. The authority upon which he rested his decision was an opinion expressed by Justice Nelson in the case of Kaine, and repeated by that Judge in a private conference upon this particular case. The language of the judgment is somewhat curious. "It is true," said Judge Shipman, "that Justice Nelson in the case of Kaine decided that the commissioner had no competent evidence before him. He therefore did not directly determine the precise question, whether, if the Commissioner had had competent evidence taken refuge in Cuba, although there was no treaty between Spain and Great Britain at that time.

presented to him, tending to prove the charge of criminality, it would have been within the rightful power of the court, or the Judge at chambers, to review that evidence; and if he thought it failed to support the charge against the prisoner, to discharge him from custody under the Commissioner's warrant. But the whole spirit and scope of his reasoning in the opinion delivered by him in the Supreme Court, as well as in the one delivered by him at chambers, tend toward the assertion and vindication of this power. To set the matter at rest, however, I am authorised by him, after full consultation upon the point, to state that such is his judgment of the law. It is, ✓ then, the law of this court, and it is therefore the duty of the court in the present case to look into the evidence upon which the judgment of the Commissioner rests, and which he has certified up to this tribunal in compliance with the writ directed to him, and to pass upon its weight as well as upon its competency." Upon examining the evidence, however, Judge Shipman held that it was sufficient, and he laid down as a rule to be observed in similar cases thereafter, that where the Commissioner had legal evidence before him, the court would not reverse his judgment except for substantial error in law, or for such manifest error in fact as would warrant a court in granting a new trial for a verdict against evidence.*

In the case of François Farez in 1870, Justice Blatch-

* 5 Blatchford, Circ. Court Reps., 414. 17 L. T. (N. S.), 55 U. S. Digest (1869), 303.

ford, while accepting the authority of Henrich's case so far as regarded the examination by the Circuit Court of the sufficiency of the evidence produced before the Commissioner, refused to follow the opinion of Justice Nelson as to the quantity of evidence required. Quoting the authority of Chief Justice Marshall, in the case of Aaron Burr, he said "the question for the magistrate is whether, after examination into the matter and a proper opportunity for the giving of testimony on both sides, there is reasonable ground to hold the accused for trial. The contrary view would destroy the object of such treaties." In this case the prisoner had claimed the right to be examined as a witness on his own behalf, and the Commissioner having refused to allow it, the Judge held the commitment invalid. He did not, however, discharge the prisoner, but remanded him into custody under the original warrant of arrest, in order that a further examination might be held.*

This case and that of Henrich are important as laying down rules of practice.

In the same year occurred the case of Thomas Primrose, who was arrested at Buffalo on a charge of robbery committed in Canada. The case is noticeable for the fact that he was arrested before any mandate had been issued by the President and was remanded upon evidence being given that an application for his surrender had been made by the Canadian Government. The President's

* 7 Blatchford, Circ. Court Reps., 34, 345, 491. 2 Abbott, U. S. Digest, 346.

mandate afterwards arriving, informations were laid before United States Commissioner Gorham, and he issued a warrant upon which Primrose was brought before him.

The prisoner called witnesses to prove an alibi, but they failed to satisfy the Commissioner, and he was surrendered.*

In 1871 a very important case was decided in the United States; that of Richard B. Caldwell, who was indicted for bribing an officer of the United States. He pleaded that the court ought not to take cognizance of the offence charged in the indictment, because at the time when he was arrested and brought within the jurisdiction of the court, he was a resident at Prescott, in the province of Ontario, Dominion of Canada, and was brought into the jurisdiction of the court on a charge of forgery under the provisions of the Ashburton Treaty, and that the offence specified in the indictment was not one of the offences mentioned in that treaty, and that the court had no jurisdiction in the case. His plea was demurred to, and the matter was argued in the Circuit Court of the Southern District of New York, in January 1871. Judge Benedict held that the plea was bad. Whether the prisoner had been extradited in good faith, was, he said, a question for the governments concerned, and not for the Courts of Law; and the prisoner being in fact within the jurisdiction of the court, and charged with a crime committed within that jurisdiction, must be tried for such crime without regard to the matter of extradition at all. In

* 7 Can. L. J., 109.

support of this decision he quoted the case of Heilbronn,* who was surrendered to the British Government on a charge of forgery, and was tried and convicted in London for a crime not within the treaty.†

✓ An attempt was made in 1873 to grant extradition by virtue of State laws in the case of Carl Vogt, alias Joseph Stupp, who was arrested in New York on a charge of arson, robbery, and murder committed in Belgium. There was no extradition treaty between Belgium and the United States, but a law of the State of New York, passed in 1822 (1 Rev. Stats. 164),‡ provided that the Governor might in his discretion deliver over to justice any person found within the State who should be charged with having committed without the jurisdiction of the United States any crime, except treason, which by the laws of New York, if committed therein, is punishable by death or by imprisonment in the State prison. An application for the surrender of Vogt was made by the Belgian consul, and Governor Hoffman issued his warrant accordingly. A writ of habeas corpus was applied for in the United States' Court, but Blatchford, J., dismissed the case for want of jurisdiction. Application was then made to Judge Curtis of the Superior Court, who granted the writ. It was held by the court that the New York statute was unconstitutional, as being in violation of

* See *ante*, p. 64.

† 8 Blatchford, Circ. Court Reps., 131. 6 Can. L. J., 227. This could not now occur in Great Britain, 33 & 34 Vict., c. 52, § 19.

‡ *Ante*, p. 40.

Article 1, § 10, of the Constitution of the United States, which says that no State shall enter into any agreement or compact with another State or with a foreign power. The State could not be constitutionally known to any foreign nation, inasmuch as the whole subject of foreign intercourse is committed to the Federal Government. This decision came before the Court of Appeal, which unanimously confirmed it upon the same grounds.*

Peter Kelly was charged, in 1874, before the District Court of Massachusetts, with committing murder on board a British vessel on the high seas, and his extradition was demanded on that charge.

Lowell, J., in refusing his extradition, said, "Upon the evidence I find that the crime committed was manslaughter, and this is not within the treaty, which mentions only murder, assault with intent to commit murder, piracy, arson, robbery, and forgery. It was suggested that murder might include manslaughter. But considering that both the law and the language of the two countries are alike, and that the treaty describes well-known crimes by their technical names, this construction is inadmissible. As well might we hold that robbery includes theft; or piracy, mutiny. In an extradition treaty, the greater crime does not include the lesser, because the intent is to deliver up great criminals only." †

* 7 American Law Review, 186 & 578. See also *The People v. Curtis*, 50 N. Y. 321; and *In re Joseph Stupp*, 11 Blatchford, Circ. Court Reps., 124, and 12 Blatchford, Circ. Court Reps., 502.

† *In re Peter Kelly*, 2 Low. Dist. Ct. Mass., 339.

In the case of *Adrianse v. Lagrave*, in 1874, was brought for the alleged wrongful conversion of personal property. An order of arrest was made and the defendant arrested. He thereupon made aside the summons on the grounds, that—

(1) Though he had been brought into New York from France, by virtue of proceedings to have been instituted under the extradition treaty between the Government of the United States and France, yet he had been arrested under the authority of the New York courts, so that he could return to France, and while still in New York.

(2) The extradition proceedings were having been instituted with the intent and purpose of bringing him within the jurisdiction of the New York courts, that he might be arrested and held upon civil process.

Church, C.J., in giving judgment in the Court of Appeals, held—

(1) That the indictment was for burglary, not within the treaty. But it was not for that purpose to raise the question,* for though he be defrauded, he cannot interpose. The question of faith is for the two governments.

(2) That though the parties who participated in getting the defendant within the jurisdiction of the New York courts, in bad faith, for the purpose of arresting him and holding him upon civil process, may not receive any advantage from

* The same doctrine was stated in *Lawrence's case* and in *Ex parte Scott*, 9 B. & C., 447.

ful acts; yet this rule does not apply to persons not concerned therein.

(3) Where there is no express treaty stipulation to the contrary, a person brought within the jurisdiction of the State courts can be detained for any act criminal or civil committed prior to the extradition beyond and besides the offence specified in the proceedings under which he was surrendered.*

In the case of Angelo De Giacomo, surnamed Ciccariello, the prisoner was charged with wilful murder committed in Italy in 1867, whence he fled to the United States; he was arrested and brought before the Commissioner at New York on the 24th October 1874. A writ of habeas corpus was then issued, and it was argued before a Circuit Court on behalf of the prisoner that there was no treaty for extradition between the United States and Italy at the time the alleged offence was committed. Blatchford, J., held that there was nothing in the convention of 1868 which excluded extradition for crimes previously committed, and added: "The correctness of this conclusion becomes more apparent when, on a comparison of this convention with other extradition treaties made by the United States, it is

* *Adrianse v. Lagrave*, 59 N. Y., 110. By 33 & 34 Vict., c. 52, sec. 19, it is provided that no person surrendered by a foreign State in pursuance of an arrangement under that Act shall, until he has been restored or had an opportunity of returning to such foreign State, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such extradition crimes as may be proved by the facts on which the surrender is grounded.

seen that there are some of such treaties made before and some since the convention in question which take pains in their language to exclude prior crimes, while this convention contains no such exclusion." *

The very important question was raised in Lawrence's case in 1876 as to whether a person extradited for one crime, could, after being tried and acquitted, be put on his trial for another crime other than that for which he was surrendered, without being afforded an opportunity of return to the country by which his surrender was granted. The facts of the case were very simple. Charles L. Lawrence, born a subject of Great Britain, but subsequently naturalised in the United States, having left Canada for England, was demanded under the treaty of 1842,† being charged with forging and uttering a certain bond and affidavit. Upon these charges, and these only Lawrence was surrendered, and taken over to America. On arriving at the port of New York, he was arrested on three bench warrants issued out of the Circuit Court of the United States upon three several indictments found against him in that Court, two for forgery and one for smuggling and conspiracy, neither being founded upon the charges for which he was extradited, and all being based upon offences alleged to have been committed before the departure of the said Lawrence for Great Britain. The case came on for hearing on demurrer.

* *In re Angelo de Giacomo*, surnamed Ciccariello, on Habeas Corpus, 12 Blatchford, Circ. Court Reps., 391.

† 8 U. S. Stat. at Large, 576 (art. x.).

before Benedict, J., who held that extradition proceedings do not, in their nature, involve any right of the person surrendered to be secured against prosecution upon any other charge than the one upon which his extradition was asked,* adding: "That an offender against the justice of his country can acquire no rights by defrauding that justice. Between him and the justice he has offended no rights accrue to the offender by flight. He remains at all times and everywhere liable to be called to answer to the law for his violation thereof, provided he comes within the reach of its arm." In the end, Lawrence pleaded guilty to the indictment, which charged him substantially with the crimes for which he had been surrendered; sentence was postponed, and he was admitted to bail.†

Whilst Lawrence's case was pending, a demand was made by the United States on England for the extradition of one Ezra D. Winslow, accused of forging and

* *Vide* United States *v.* Caldwell, *ante*, p. 77, and 8 Blatch. Cir. Ct. Rep., 131; *Adrianse v. Lagrave*, 59 N. Y., 110, and *ante*, p. 80.

† Parliamentary Papers, North America, No. 2 (1876). Further Correspondence respecting Extradition (C—1526), p. 14, No. 14. 13 Blatch. Cir. Ct. Rep., 295. The following is a collection of cases and authorities bearing on the question raised in Lawrence's case:—*Williams v. Beacon*, 10 Wendell, 636; *Adrianse v. Lagrave*, 59 N. Y., 110; *U. S. v. Caldwell*, 8 Blatch. Cir. Ct. Rep., 131; *Burley's case*, 1 Upper Canada L. J. (N.S.), 20; *In re Heilbronn*, 12 N. Y. Leg. Obs., 66; *Reg. v. Von Aernam*, 4 Upp. Can. Reps. C. P., 288; *Re Paxton*, 10 Low. Can. Jurist, 212, 11 Low. Can. Jurist, 352; *Commonwealth v. Hawes*, 13 Bush (Ky.), 697; 14 Cox, C. C., 135. Report of the Select Committee on Extradition (1868): Mr. Hammond's answer, No. 1036; Mr. Mullen's answers, Nos. 1214 and 1216.

uttering forged paper within the jurisdiction of the United States. Lord Derby, however, on behalf of Her Majesty's Government, absolutely refused to surrender him unless and until the United States Government gave an assurance that the said Winslow should be restored or had an opportunity of returning to her Majesty's dominions, be detained or tried in the United States for any offence committed prior to his surrender other than the extradition crimes specified in the facts on which the surrender would be grounded.

In the case of Hawes † in 1878 the Court of Kentucky took the opposite view to that taken in the cases of Caldwell, Lawrence, and Lagrave. Hawes, having surrendered by Canada on charges of forgery and embezzlement, held that he could not, while in the custody of the United States, under such surrender, be tried upon an indictment for embezzlement, on the ground that the specific treaty of certain crimes as grounds of surrender did not give by implication the right to try for other crimes the person surrendered. The Texas Court of Criminal Appeals in 1881 in the case of Blandford v. State, ‡ and the Court of Ohio in 1883 in State v. Vanderpool, took a similar view to that adopted in the case of Hawes.

✓ In 1886 the question was raised in the Supreme Court of the United States in the case of Williams v. United States, who was surrendered by Great Britain under

* Parliamentary Papers, N. America, No. 1 (1876),

† Commonwealth v. Hawes, 13 Bush (Ky.), 697; 14 Ky. 100.

‡ 10 Tex. Ct. of App., 627.

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of 1842 upon a charge of murder on the high seas of one Janssen. He was put on his trial before the Circuit Court of the Southern District of New York, not for murder, but upon an indictment (under section 5347 of the U. S. Revised Statutes) which charged him with cruel and unusual punishment of the said Janssen, who was one of the crew of an American vessel of which Rauscher was an officer. The punishment charged consisted of the identical acts proved in the extradition proceedings. The substantial question for the decision of the Supreme Court was whether under the circumstances stated the defendant could be tried upon this indictment, and the majority of the Court (Miller and Gray, JJ.) decided that he could not. Miller, J., held that treaties, being in the United States part of the law of the land, must be judicially construed, and that such a construction of the treaty of 1842 limited the power of the United States Courts to try persons surrendered under it, to the offence for which the surrender was made, and that this view was strengthened by the terms of the provisions made in the Revised Statutes (sec. 5275) for the protection of persons extradited to the United States. Gray, J., based his decision on the words of the statutes alone. Chief Justice Waite dissented, on the ground that the treaty contained no express limitation of the authority of the Courts to try prisoners, and that, any exercise of their jurisdiction amounted to a violation of international obligations, the only remedy was by diplomatic action.

In another case which was before the Sup about the same time, the prisoner (Frederick plained, not that he had been brought into under a treaty which limited the powers of t try him so as to exclude the offence for wh tried, but that he had been brought from Peru proceedings which were mere kidnapping. held that this gave him no right to their whatever might be his right of suing the had wrongfully brought him from Peru, or t Peruvian Government of complaining of his u seizure within their territory.

It has not been thought expedient to set cases of extradition which have occurred i different States in America. The list given i however, be found useful.

* *Malpass v. Caldwell*, 70 N. C., 130; *Ex parte* 434; *Ex parte Cubrath*, 49 Cal., 436; *Morton v. Ski* 123; *People v. Brady*, 56 N. Y., 182; *Re Buell*, Matter of *Briscoe*, 51 How (N. Y.), Pr., 422; *Hible Tex.*, 197; *Ex parte Rosenblat*, 51 Cal., 285; *Ex par* Utah T., 23; *Re Titus*, 8 Ben., 411; *People v. Pinke* (N. Y.), 199; *Leary's case*, 6 Abb. (N. Y.), N. Cas., 43; 4 Tex. App., 645; *Work v. Corrington*, 34 Ohio St., 6 McKnight, 34 Ohio St., 316; *Ex parte Ammones*, 34 Wilcox v. Notze, 34 Ohio St., 520; *Hartman v. A* 344; *Re Wahl*, 15 Blatch, C. Ct., 334; *Jones v. Leo* 106; *Re Miles*, 52 Vt., 609; *Ex parte Sweavingen*, State v. Swope, 72 Mo., 399; *Tullis v. Fleming*, 68 *parte Leary*, 10 Ben., 197; *People v. Donohue*, 84 N Cannon, 47 Mich., 481; *Re Hooper*, 52 Wis., 699; . raine, 16 Nev., 63.

A Convention amending the extradition clause of the Ashburton Treaty was signed in London on June 25th 1886 by Mr. Phelps and Lord Roseberry. Its most important provisions were those of Article I., which extended that Treaty to the following crimes:—manslaughter; burglary; embezzlement or larceny of the value of fifty dollars or ten pounds and upwards; and malicious injuries to property whereby the life of any person should be endangered, if such injuries constituted a crime according to the law of both countries—Article V., which provided that a fugitive criminal should not, without having had an opportunity of returning to the State by which he was surrendered, be detained or tried for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender was granted—and Article VI., which provided that extradition should be carried out in the United States and in Her Majesty's dominions respectively, subject to and in conformity with the forms prescribed by the laws regulating extradition for the time being in force in the surrendering State.

This Convention has not, however, up to the present date been ratified.

CHAPTER IV.

HISTORY OF THE LAW IN CANADA.

THE law of Canada, with regard to extradition, has been closely connected with that of the United States, and the Canadian provinces were before the mother country in their recognition of international duty upon this subject. In 1827, Joseph Fisher, an alien, was arrested in Lower Canada, charged with larceny in Vermont, and an order was made by the governor of the province for his rendition to that state, although no treaty existed. A habeas corpus was awarded, and Chief-Justice Reid, before whom the case was heard, after full argument and consideration, refused the discharge. In his judgment he adopted the principles laid down by Chancellor Kent in the decision in Washburn's case,* and enforced them by some weighty comments of his own. He said, "The right of surrender is founded on the principle that he who has caused an injury is bound to repair it, and he who has infringed the laws of any country is liable to the punishment inflicted by those laws. If we screen him from that punishment we become parties to his crime we excite retaliation, we encourage criminals to take

* See *ante*, p. 39.

refuge among us. We do that as nations which as individuals it would be dishonourable, nay criminal, to do. If, on the contrary, we deliver up the accused to the offended nation, we only fulfil our part of the social compact, which directs that the rights of nations as well as individuals shall be respected, and a good understanding maintained between them, and this is the more requisite among neighbouring States, on account of the daily communication which must necessarily subsist between them." * This fugitive was accordingly delivered up, but the Government did not accept as conclusive this well-reasoned rule. In 1833 an application was made by the Governor of New York to Lord Aylmer, then Governor of Canada, for the extradition of four men who had crossed the boundary, and barbarously murdered a young woman in the town of Champlain. Lord Aylmer refused the application, saying, in his reply, "It is not competent to the Executive, in the absence of any regulation by treaty or legislative enactment on the subject, to dispense with the provision in the Habeas Corpus Act. The subject has received every consideration, and, I very much regret to say the opinion of the Attorney-General is confirmed by a majority of those who have been called upon." (Letter of Lord Aylmer to General Marcy 27th May 1833.) † However, in the same year, the province of Upper Canada remedied this defect in her laws by the passing of a short but comprehensive Act upon the subject. The Act 3 William IV.,

* 1 Stuart, Can. Rep., 245. Quoted, Robinson's Practice, i. 9.

† See *Holmes v. Jennison*, 14 Peters, 540.

c. 6, was entitled, "An Act respecting the apprehension of fugitive offenders from foreign countries, and delivering them up to justice," and its object was recited to be "for the apprehending and delivering up of felons and other malefactors, who having committed crimes in other countries seek an asylum in Upper Canada."

It enacted—

"1. In case murder, forgery, larceny, or other crimes punishable by the laws of Upper Canada with death or confinement at hard labour, be charged to have been committed within the jurisdiction of a foreign country by a person who has fled to or sought refuge in Upper Canada,—and in case a requisition for the surrender of such person be made by the government of such country, or by its ministers or officers authorised to make the same,—then upon such evidence of criminality as would warrant his apprehension and commitment for trial had the offence been committed in Upper Canada, the Governor may, in his discretion, by and with the advice of the Executive Council, deliver such person up to justice, and direct his transmission to the custody of such foreign government.

"2. For preventing the escape of any person so charged, before an order for his transmission can be obtained from the Governor, any judge or justice of the peace in Upper Canada, acting within his jurisdiction, upon such evidence on oath as satisfies him that the person accused stands charged with some crime of the description hereinbefore specified, or that there is good ground to suspect him to

have been guilty thereof, may issue his warrant for the apprehension and commitment of such person, in order that he may be detained in secure custody until application can be made to the Governor for his surrender, and until an order can be made thereon.

“3. But it shall not be incumbent upon the Governor in Council to deliver up any person so charged, if for any reason he deems it inexpedient ; and if any person committed under this Act be detained in custody beyond the time reasonably required for carrying the provisions hereof into effect, such person may be discharged upon habeas corpus.”

This Act was incorporated in the Consolidated Statutes of Upper Canada, as 22 Vict. c. 96, but was repealed by 23 Vict. c. 41, other legislation extending to the whole of Canada having rendered it unnecessary.

Only one question of difficulty seems to have arisen under this Act, and the case is not reported, but was mentioned by Lord Campbell in the House of Lords.* While, as Sir John Campbell, he was Attorney-General (1834–1841), a slave escaped from his master in the State of New York, and got to Canada. To facilitate his escape, he rode a horse of his master's for a part of the way, but turned it back on reaching the frontier. The authorities of New York, knowing the Canadian Government would not give him up as a fugitive slave, took a bill of indictment before the grand jury at New York, and got a true

* 60 Hansard, p. 326. See this case referred to in Forsyth's Cases and Opinions on Const. Law, 370.

bill returned for felony in stealing the horse, and then claimed him. The Canadian Government consulted the English Government, and the Attorney-General advised that the man could not be given up, as the essential ingredient of the felony, the *animus furandi*, was wanting in his act, and the true bill, where no felony had in fact been committed, did not bring the case within the law.

In the case of *Reg. v. Tubbee* it was held by Macaulay, C.J., that the statute 3 Wm. IV. c. 6 was superseded by the Ashburton treaty so far as concerned Great Britain, Canada, and the United States, but remained in force with respect to other countries. The prisoner, who was charged with bigamy committed in the United States, was therefore discharged, the offence being within the statute, but not the treaty. The chief justice in this case laid down that a judge at chambers has power to review and decide upon the sufficiency of the evidence returned by the committing magistrate, or if necessary to hear further testimony.*

By virtue of the Act of 1833, the treaty between the United States and Great Britain, concluded in 1842,† had immediate operation in the province of Upper Canada; but the Act passed in the following year, to give effect to the treaty in the United Kingdom, was found inconvenient in its application to a territory so extensive as Canada. Accordingly, under the fifth section of the Imperial Act (6 & 7 Vict. c. 76), a Colonial Act was passed (12 Vict. c. 19); and it being left to Her Majesty

* 1 Upper Can. Prac. Reps., 98.

† See *ante*, p. 47.

to fix the day of its coming into operation, an Order in Council was made on the 28th March 1850, and proclaimed in May of the same year, by which the operation of the Imperial Act in the colony was suspended. The Canadian Act was afterwards put in the schedule of Repealed Statutes in the Consolidated Statutes (Canada) of 1859, but was re-enacted in terms in those statutes as 22 Vict. c. 89.

The preamble recited that the provision of the Imperial Act, requiring that before the arrest of a fugitive offender, a warrant should issue under the hand and seal of the person administering the government, to certify that a requisition had been made on the authority of the United States, had been found inconvenient, "inasmuch as by the delay occasioned by compliance with the said provision, the offender may have time afforded him for eluding pursuit"; and the first clause of the statute enacted, that upon complaint made, any of the judges of the superior courts in the province, or any of Her Majesty's justices of the peace in the same, might issue a warrant for the apprehension of the person charged ; * and if the evidence on the hearing should "be deemed by him sufficient to sustain the charge according to the laws of the province," he

* In the case of Asher Warner (1 U. C. Law Journal, 16), the prisoner had been tried in the United States for forgery and found guilty by the jury, but was allowed to be out on bail pending the decision of a point of law. It was decided against him, but no sentence passed, as in the interval he had made his escape to Canada. It was held that he was a person charged or accused within the terms of the treaty and statutes, and might therefore be surrendered to the United States.

should certify the same, with a copy of all the testimony, to the Governor. The other clauses were substantially the same as those of the Imperial Act ; but a few alterations were made, which were removed by a later statute. By the 24 Vict. c. 6 (Canada *), the first three sections of the 22 Vict. c. 89 were repealed, and others substituted for them. In the first of the repealed sections jurisdiction had been given to the justices of the superior courts of the province, and to the justices of the peace. In the new provision the latter were omitted, and jurisdiction was given to "any judge of any of Her Majesty's superior courts of the province, or any judge of a county court in Upper Canada, or any recorder of a city in the province, or any police magistrate or stipendiary magistrate in this province, or any inspector and superintendent of police empowered to act as a justice of the peace in Lower Canada." The former statute had authorised the delivery to the United States, "or any of such States," for crimes committed "within the jurisdiction of the United States or any of such States." In the amended clauses, the words, "or any of such States," were everywhere struck out. Two other alterations were made in the rules of procedure, in order to bring the law into harmony with that of the United Kingdom. The evidence produced

* This statute was, as a matter of precaution, sanctioned by the Queen in Council at a Court holden at Balmoral Oct. 11, 1861. 1 Upper Canada L. J. (N. S.), 60. In the argument in the *St. Alban's Raid* case, Mr. Abbott said that it was hastily passed, to facilitate the extradition of fugitive slaves. *St. Alban's Raid*, 164.

before the magistrate was not to be "sufficient to sustain the charge according to the laws of this province," but "such as, according to the laws of this province, would justify the apprehension and committal for trial of the person accused;" and in the second clause, which provided that depositions might be produced when "certified under the hand of the person or persons issuing such warrant, or *under the hand of the officer or person having the legal custody thereof*," the latter words were omitted.

For the sake of clearness, these statutes have been taken together; but in the year before the latest amendments were made, a case had arisen in Canada which caused more excitement, both there and in Great Britain, than had ever been produced by a demand of extradition. This was the case of Anderson.* In September 1853, John Anderson, a negro slave, born in the United States, ran away from his master. About three weeks later, he met and spoke to a planter named Diggs, who recognised him. Anderson asked Diggs where Charles Givens lived, saying he belonged to M'Donald, and wanted Givens to buy him that he might be near his wife. Diggs charged him with being a runaway slave, and refused to let him go. The law of Missouri declared that any slave found more than twenty miles from his home should be deemed a runaway, and that any person might apprehend a negro being, or suspected of being, a runaway; and it provided a reward for so doing. Diggs, however, told Anderson

* Ann. Reg. (1861), 520, Parliamentary Papers, 1860. 2 Papers of Juridical Society, 452.

to come and get his dinner, and he would then go with him to Givens. On the way, Anderson tried to make his escape, and Diggs then called to four negroes who were with him to give chase, saying they should have the reward. Anderson, being overtaken, drew a knife, threatening to kill any one who touched him. The negroes kept off, but Diggs struck at him with a stick, which caught in a bush and broke, and then Anderson stabbed him in the breast. Diggs, turning to flee, caught his foot in a tree and fell, and Anderson then stabbed him in the back, and after being chased a short distance by the negroes, succeeded in making his escape to Canada. Diggs shortly after died of his wounds. Anderson lived unmolested in Canada until 1860, when he was recognised, and was arrested on the application of the officers of the State of Missouri. He was brought before a justice of the peace at Brantford on a charge of murder (under 22 Vict., c. 89), and the evidence being held sufficient, he was committed to prison, and an application for his extradition was made by General Cass, the United States Secretary of State. A habeas corpus was applied for on behalf of Anderson, and the question was argued before the Canadian Court of Queen's Bench.* Chief-Justice Robinson had some doubt whether the Court could interfere at all when the justice had made the required certificate.† In his view of the case, however, this question was unimportant, as, upon the merits, he

* 20 Upper Canada, Q. B. 164.

† See *Re Asher Warner*, 1 Upper Canada L. J. (N. S.) 16.

thought the commitment right. The words of the statute being, "if, on such hearing, the evidence be deemed by
 m sufficient to sustain the charge according to the laws of this province," the Chief-Justice held that the provision, "according to the laws of this province," referred only to the means and amount of proof, and not to the definition of the offence. By the municipal law of Missouri, Diggs was authorised to arrest Anderson; and by the law of England, the killing of a man legally authorised to arrest the prisoner was murder. Circumstances of justification were for a jury, whose office the justice at Brantford had no right to assume. The fact that, if acquitted, he would be returned to slavery, was not material.* That was a question for the framers of the treaty.

Justice Burns agreed with the Chief-Justice.

Justice M'Lean dissented, and held the commitment bad on three grounds:—

1. The charge was, "did wilfully, maliciously, and feloniously stab and kill," which was not an express charge of murder.

2. The warrant of committal commanded the gaoler to keep the prisoner "until he shall be delivered by due course of law." This was a bad commitment, for the only way in which he could be so delivered was by an order of discharge from that Court.†

* See opinion of Sir F. Pollock, Att.-Gen., 71 Hans. (3rd series) 565.

† See case of Jacques Besset, 14 L. J. (M. C.), 17; *post* p. 130.

3. The words, "according to the law of this province," applied to the nature of the crime, not merely to the quantity of evidence; and as the law of Canada did not recognise slavery, Anderson could not be held to have committed murder in resisting an unlawful detention.

In accordance with the opinion of the majority of the Court, the prisoner was remanded; but notice was given of an appeal to the Court of Error and Appeal in Upper Canada. By this time the case had created much excitement in England, and the Secretary for the Colonies addressed a despatch to the Governor of Canada, instructing him not to issue his warrant for the extradition of Anderson, even if the judgment of the Queen's Bench were upheld on appeal. Her Majesty's Government, he said, were not satisfied that the decision of the Court at Toronto was in conformity with the views of the treaty which had hitherto guided the authorities in this country; and they desired an opportunity of further considering the question, and, if possible, of conferring with the Government of the United States upon the subject.

Meanwhile a habeas corpus was moved for in the Queen's Bench at Westminster upon the affidavit (a singularly meagre one) of M. Chamerovzov, the Secretary of the British and Foreign Anti-Slavery Society. The question was argued on behalf of the prisoner by Edwin James, Q.C., Flood, and Gordon Allan, before Chief-Justice Cockburn, and Justices Crompton, Hill, and Blackburn.

The question was whether the Crown, by concurring in the establishment of a separate judicature for Canada,

had vested in the courts of that country the exclusive right of issuing a habeas, and the Court unanimously held that as the Legislature, in establishing that local judicature, had not expressly abrogated the jurisdiction in this matter possessed by the courts at Westminster, they were, while sensible of the inconvenience which might result from such a course, bound by the precedents quoted to grant the writ.*

It was not, however, needed. Before it arrived in Canada, the case had been brought by habeas corpus before the Canadian Court of Common Pleas, and that Court had, chiefly on technical grounds, overruled the judgment of the Queen's Bench, and discharged the prisoner.† The most important question in the case thus remained without final decision beyond that of the Canadian Queen's Bench. It has, however, been raised in other cases, which will be considered, and the matter discussed in a later chapter of this book.‡

The Civil War in the United States gave rise in Canada to two cases of great importance. They were almost contemporaneous, and arose out of very similar circumstances, and involved the same question of law. Slightly the first in order of time was the case

* 30 L. J. Q. B., 129; 9 W. R., 225; 7 Jur. N. S. 122; 3 L. T. N. S., 622. In consequence of this decision, the Act 25 & 26 Vict. c. 20, was passed, which provided that no writ of habeas corpus shall issue out of any court in England to any colony or foreign dominion of the Crown in which any court exists having power to issue and insure the due execution of such writ.

† 10 Canadian C. P., 60.

‡ See *post*.

of Burley, who was demanded by the United States on a charge of robbery committed on board the + steamer *Philo Parsons* on Lake Erie* on the 19th of September 1864. Being brought before the Recorder of Toronto he pleaded in justification that he was a commissioned officer in the service of the Confederate States, that he was entitled to be regarded as a belligerent, and that his object in taking forcible possession of the *Philo Parsons*, of which act the robbery with which he was charged was part, was to use her as a means to enable his party to effect the release of the Southern prisoners confined on Johnson's Island. He further objected that he was a British subject, and as such could not be surrendered to the United States under the treaty. The Recorder overruled the objection as to nationality, holding that the words "all persons" in the statute were subject to no exception on this ground. He admitted evidence of the matters alleged in justification, granting the adjournments necessary to allow the accused to produce his witnesses. Upon consideration \ of such evidence, however, he held that the prisoner, having violated neutral territory and been guilty of robbery of a non-combatant, which was not an act of lawful war, was within the treaty, and committed him to prison with a view to his surrender. A writ of habeas corpus was thereupon granted by Hagarty, J., and upon return made, the case was argued before

* 1 Upper Canada, L. J. (N. S.) 20. See also 1 Local Courts and Municipal Gazette, Toronto, 10 (1865).

Chief-Justice Draper, (Q.B.,) Chief-Justice Richards, (C.P.,) (who had been requested by Chief-Justice Draper to sit with him) and Justices Hagarty and Wilson. These judges unanimously remanded the prisoner, saying that the circumstances of the case were so suspicious, that if it had been a case within their own territory, the magistrate would not have been justified in discharging him. Burley had no commission, but his acts were avowed and assumed in a manifesto by President Davis.

Justice Wilson on this point said, "There is an obvious distinction between an order to do a belligerent act, and the recognition and avowal of such act after it has been done. The one is an act of war, the other an act of established government. The one is consistent with what Great Britain acknowledges, the other is not. For us judicially to give effect to the avowal and adoption of these acts would be to recognise the existence of the nationality of the Confederate States, which at present our Government refuses to acknowledge." * The

* Burley was surrendered and brought to trial in the State of Ohio. The judge ruled that if the acts complained of had a belligerent object, and were done under the authority of a Confederate Commission, the *animus furandi* was wanting, and he must be found not guilty. The jury disagreed, and the prisoner being released on very moderate bail did not reappear. The minutes of the evidence taken in 1868 by the Select Committee of the House of Commons contain a very singular statement with regard to this case, made by the Right Hon. Edmund Hammond, the permanent Under-Secretary for Foreign Affairs. He said, "It was suggested that the American Government contemplated putting him [Burley] on his trial for piracy, which, however, did

distinction thus drawn, which has wider and better reasons to support it than can be gathered from the technical manner in which Judge Wilson expressed it, was discussed and illustrated in the other and more valuable case, that of the St. Alban's raiders.* On the 19th of October 1864, Bennett H. Young, with twenty armed followers, entered St. Alban's in Vermont. Declaring themselves Confederate soldiers, they seized the banks, and took possession of the bank-notes and securities they contained. They secured a number of the citizens, and kept them under a guard in a public square. While they were in possession of the St. Alban's bank, a man named Breck entered to pay a note. He was immediately seized, and his money was taken from him

not prove to have been the case; but he seems to have been charged in the United States, though not before the Canadian authorities, with assault with intent to commit murder. The question was referred to the law officers in this country, and it was held that, if the United States put him *bond fide* on his trial for the offence in respect of which he was given up, it would be difficult to question their right to put him upon his trial also for piracy, or any other offence which he might be accused of committing within their territory, whether or not such offence was a ground of extradition or even within the treaty." Answer 1032. "We admit in this country that if a man is *bond fide* tried for the offence for which he was given up, there is nothing to prevent his being subsequently tried for another offence, either antecedently committed or not." Answer 1036.

* The account of this case is taken from a volume published in Montreal in 1865, entitled 'The St. Alban's Raid: a Complete and Authentic Report of all the Proceedings. With the Arguments of Counsel, and the Opinions of the Judges, revised by themselves. Compiled by L. N. Benjamin, B.C.L.'

by two of the raiders. A skirmish ensued; the raiders failed in an attempt to fire the town, and made their escape, having seized a number of horses belonging to inhabitants of St. Alban's; but on reaching Canada, fifteen of them were arrested without warrants, and without any sworn informations having been taken. One of the prisoners, William H. Hutchinson, was brought before the Recorder of Montreal on a charge of stealing the moneys of the St. Alban's bank and assaulting one of the clerks, and was committed to prison. The warrant of commitment ordered the gaoler to receive "the said William H. Hutchinson and him safely keep for examination." An application was made to Mr. Justice Badgley for a habeas corpus, on the ground that the committal for examination, without mentioning the day, was too general, and also that the information on which the warrant of commitment was issued stated that the prisoner was apprehended on "suspicion of felony," and that this was not a sufficient charge. A writ of certiorari was at the same time moved for to bring up the information, which was sworn to be of the following purport—"That Guillaume Lamothe, chief of police (by whom it was signed), arrested the prisoner on suspicion of felony and found on him ten thousand dollars in Franklin County bank bills, the said bank being situate at St. Alban's in the State of Vermont, one of the United States of America, and that he had reason to believe that these bills were stolen by Hutchinson, and others with whom he acted in concert." The habeas was granted

returnable immediately, but another commitment was at once made out, and returned with the original one. This second commitment was by a justice of the peace for the city of Montreal, and in it both defects were remedied.*

On argument before Judge Badgley, the Recorder's commitment was held too general, and was accordingly quashed, another day being appointed for hearing the application of the prisoner to be discharged from the second warrant. No further separate proceedings were, however, taken in this prisoner's case.

The other prisoners had meanwhile been brought before Justice Coursol, who had signed the second warrant in Hutchinson's case, and were by him remanded for further examination. They immediately petitioned the Court of Queen's Bench for a habeas, on the grounds (1) that the magistrate had no power to remand in cases under the extradition Acts, and (2) that the remand appointed no day for the further examination, and therefore was too general, the statutes giving magistrates power to remand having limited the time to eight days. It appeared, however, that the eight days had not yet expired. The application was peremptorily refused, the judges holding that the power to remand was essential to a magistrate's performance of his duties, and that the irregularity of not

* The validity of a second commitment was discussed and affirmed in the case of *Asher Warner*—1 Upper Canada, L. J. (N. S.), 16—and in *Reg. v. Morton and Another*, U. C. Reps. 19 C. P. 10, reported as *Ex parte George Henry Martin*, 4 Can. L. J., 198. See also observation of Blackburn, J., in *Reg. v. Tivnan*, *post*, p. 140.

fixing the day was unimportant. They expressed doubts whether they had any jurisdiction until after final commitment.

The examination was then proceeded with by Judge Coursol.

The evidence for the prosecution being closed, the counsel for the prisoners applied for a delay of thirty days to enable them to obtain evidence for the defence.

The petition of the prisoners stated that they desired to prove and could prove that the acts charged against them were done by them as soldiers of the Confederate government, and were duly authorised and directed by the military authorities of the Confederate States, acting under the government thereof, and were acts of warfare committed and performed in conformity with the rules and precedents by which civilised warfare is conducted. The application was opposed on the part of the Crown, and also of the United States, on the ground that it was not the province of the magistrate to receive exculpatory evidence in cases under the extradition treaty, as he would be thereby virtually assuming the jurisdiction of the American Courts to try the accused.

Judge Coursol said, "I totally differ from that view, and for this obvious reason, that the Act, to give effect to the treaty, requires that I should be perfectly satisfied of the criminality of the act of the accused according to our own law. The affidavit shows that the accused propose to prove that anything they may have done was an act of legitimate warfare, and as international law is a part of

the common law of this country, affecting the character of homicide and other felonies when committed under special circumstances, I cannot be prepared to give my opinion upon the evidence of criminality until I have the whole case before me." He added, that in the *Chesapeake*,* and other cases, witnesses for the defence were examined without objection. The delay was therefore granted, a promise being given in writing by the prisoners that they would not make any application for release until the month had expired. On the 13th of December the inquiry was renewed, and the counsel for the prisoners then made an objection to the jurisdiction of the Court. They contended, that in consequence of the alterations made by the 24 Vict., c. 5, in the provisions of the 22 Vict., c. 89, the operation of the Imperial Act 6 & 7 Vict., c. 76, had revived, and that Act requiring a warrant to be issued by the Governor-General in the first instance, which had not been done in this case, the Court had no jurisdiction to arrest or detain the prisoners.† Judge Coursol held the objection valid, and at once discharged them.

Immediately after this discharge, Mr. Justice Smith issued a warrant similar to those under which they had been previously in custody, and five of the raiders were re-arrested near Quebec on the 20th of December, and brought before him for examination.

At the close of the case for the prosecution the objection which had before succeeded was again raised, but in

* See *post*, p. 137.

† See *ante*, p. 93.

an elaborate judgment Mr. Justice Smith overruled it, and held that he had jurisdiction.*

It was then objected that the crime charged was not within the treaty, that it was an offence against the State of Vermont, and as the State jurisdiction of Vermont was separate from, and independent of, the jurisdiction of the United States, it was not covered by the 24 Vict., c. 6, § 1, which only spoke of offences committed "within the jurisdiction of the United States." It was contended that this distinction was recognised by the 22 Vict., c. 89, which spoke of the jurisdiction of the United States, "or of any of such States," and that these words being omitted in the later statute, it intentionally restricted the operation of the treaty to crimes committed solely within the jurisdiction of the United States. Judge Smith held that "jurisdiction" and "territory" were convertible terms when used in the sense of the treaty power. In the treaty and in the law the word "jurisdiction" must mean territorial jurisdiction. The words relied upon were improperly introduced into the earlier Act, and properly rejected from the later one, the law now standing as if they had never been used at all. Upon this decision being pronounced (7th January 1865) an application was made by the prisoners for another delay of thirty days. Their counsel (Mr. Abbott, Q.C.) thus laid down the principle on which he applied—"If it be really a case of conflicting

* To remove any doubt upon this point an Order in Council was issued, 4th February 1865, declaring the Imperial Act suspended so long as the Provincial Acts should continue in force.

evidence, the fact of the crime being committed being proved, that is no case for a magistrate to try ; it is not within his jurisdiction to do so. (*Judge Smith*.—Clearly not ; it is none of my business.) But if, on the other hand, the prisoners propose to show that the act committed does not constitute a crime for which extradition could be demanded, that is a question which the judge must investigate and decide. In doing this he does not try the robbery, but the application of the treaty."

Mr. Abbott stated that a delay for a similar purpose had been granted in Burley's case (for thirty days), and in another case by Judge Short at Sherbrook.

In spite of the strong opposition of the counsel for the United States, the delay was granted.

On the 10th of February an application for further delay was made on affidavit that the solicitor for the defence had been refused permission to pass the lines to obtain the necessary papers from Richmond, and that Lieutenant Davis, of the Confederate army, who had entered the Federal lines to receive despatches to take to Richmond for this purpose, had been captured and sentenced to death as a spy.

Judge Smith refused further delay. To grant it would, he said, be to decide that the case could not be proceeded with until the war was ended. Witnesses were then called for the defence, chiefly to prove the authenticity of the following documents which were produced : Young's commission as a lieutenant in the Confederate service ; his instructions to form a corps of twenty escaped prisoners

for special service; the order for the raid signed by Mr. C. C. Clay; the muster rolls of the companies to which the prisoners belonged.

Upon this evidence, after long argument on both sides, Judge Smith, in a very elaborate judgment, discharged the prisoners. He held "that the attack on St. Alban's was a hostile expedition, authorised both expressly and impliedly by the Confederate States, and carried out by a commissioned officer of their army in command of a party of their soldiers. And therefore that no act committed in the course of, or as incident to, that attack can be made the ground of extradition under the Ashburton treaty."

The counsel engaged throughout this case were, Mr. Abbott, Q.C., Mr. Laflamme, and Mr. Kerr, for the prisoners; Mr. Johnson, Q.C., for the Crown; and Messrs. Devlin and Ritchie for the United States.

In the year 1866 a case occurred in Lower Canada involving the important question, whether a person who had been surrendered under an extradition treaty could, when put upon his trial, raise the question of the validity and the terms of his extradition.* One John Paxton was charged with uttering a forged promissory note, knowing it to be forged. A preliminary plea was put in that the prisoner was a resident in Chicago in the State of Illinois, one of the United States of America, and that he had

* *Reg. v. Paxton*, 10 Lower Canada Jurist, 212. It was laid down in *Ex parte Scott*, 9 B. & C. 446, in 1829, that if a person charged with a crime is found within the jurisdiction, the Court has nothing to do with the circumstances under which the said prisoner came there.

been thence extradited on a charge of forgery, and could not therefore be legally tried in Canada for any other offence. A replication was filed denying the truth of the plea, and a jury being empanelled to try the issue of fact thus raised, found "that the prisoner was extradited for forgery, whereas he is actually indicted for uttering forged paper."

The Crown prosecutor thereupon moved that the finding and verdict of the jury should be set aside, and a new trial granted upon two grounds, first, that the prisoner had been improperly allowed the right of peremptory challenge; second, that the warrant of the Governor-General authorising the demand of the prisoner from the United States on the charge of forgery did not afford any evidence of the extradition as alleged in the plea. The case was argued before the Crown side of the Queen's Bench (Montreal) on the 20th October 1866. The judges differed in opinion. Drummond, J., was in favour of the prisoner on both points; Badgley, J., in favour of the prisoner on the first point, but against him on the second; Mondelet, Assist.-J., was against the prisoner upon both points. With regard to the more important question involved, Badgley, J., and Mondelet, A.-J., held that the point raised by the plea was not a matter of fact to be submitted to a jury, but was to be determined by the Court itself. In a very powerful judgment, Drummond, J., dissented from and protested against this doctrine. The Court, however, decided that no new trial should be had inasmuch as no such collateral issue as tendered by the

plea should have been submitted to the jury; that the motion therefore should be refused, but that the prisoner should plead and answer to the indictment forthwith, and that the trial thereon should proceed. The prisoner was thereupon again arraigned upon the charge of uttering forged paper, and being called upon to plead to the indictment, said, "I am here by virtue of an Act of Extradition upon the demand made by his Excellency the Governor-General on the United States, charging me with the crime of forgery, and I protest against being called upon to plead to or to answer any other charge than that for which I was so extradited, and I also protest against the unfairness of the Crown in denying the fact of my extradition, which is a violation of the good faith which should mark every proceeding under the treaty, and thus protesting plead not guilty." He was tried and found guilty, but the Court refused to pass sentence until the Court of Appeal should have pronounced upon the validity of the verdict. The Court of Appeal, consisting of the same judges as decided the question before, with the addition of Duval, C.J., affirmed the conviction.* It may be observed that the crime actually charged in this case was within the treaty, but this does not affect the important question involved. The judgment established that there was nothing in the law of Canada to prevent the Courts from trying a surrendered prisoner for an offence other than that for which his extradition was granted.† Now, however, by

* 10 Lower Canada Jurist, 212.

† See the cases of R. B. Caldwell, *ante*, p. 77; Heilbronn, *ante*,

section 23 of the Canadian Extradition Act of 1877 (40 Vict., c. 25), a surrendered prisoner cannot be tried for any other offence, if such trial would be a contravention of the terms of the arrangement under which he is surrendered.

A further authority upon this point, and in the other province of Canada, is found in the judgment of Macaulay, C.J., in the case of Von Aernam, who was surrendered to Canada by the United States upon a charge of forgery.* After his committal for trial an application was made for his release on bail, on the ground that there was no sufficient proof of the *corpus delicti*, or of the instrument being false and fabricated; and it was urged upon his behalf that the offence was at the utmost only a misdemeanour, namely, that of obtaining money by false pretences, which was not an offence within the treaty. Macaulay, C.J., refused the application, saying, "The committing magistrate has transmitted copies of all the depositions, &c., before him, but they are not all that may be reasonably supposed to exist. It is not necessary to express an opinion on the point, but I am much disposed to regard the instrument as a forged bill, and even if the prisoner's offence amounted to false pretences only, I should hesitate to bail him under the circumstances under which he has been taken, surrendered, and received into custody. Being in custody, he is liable to be prosecuted for any offence which the facts may support."†

pp. 64, 78; Lamirande, *post*, pp. 113, 189 Rennecon and Faure de Monginot, *post*, pp. 191, 194.

* See *ante*, p. 66.

† Upper Can. Reps., 4 C. P., 288.

A notable case which occurred in Lower Canada, and at about the same time as that of Paxton, showed that so far as the safeguards provided by extradition treaties are left to the enforcement of Government officials they are of no great value. In these matters the persons employed to obtain the surrender have generally very strong reasons for effecting it whether in accordance with the treaty or in violation of it, and they are aware that the public feeling, without which it is difficult to induce a Secretary of State to act, is not likely to be greatly excited on behalf of a fugitive criminal. One Lamirande, who was cashier to the Bank of France at Poitiers, having abstracted large sums of money from the vaults of the bank, and made entries in the books which he had to keep which were not correct, but represented the sums which would have been in the vaults but for his thefts, fled to Canada, and was claimed by the French Government for the crime of forgery. The warrant of the Governor-General having been issued, the accused was arrested, and after examination before a police magistrate, was, on the 22nd of August 1866, committed to gaol with a view to his surrender. An application was immediately made to a judge in chambers for a writ of habeas corpus. There could be no question that Lamirande was entitled to his discharge; in the case of Charles Windsor* the Court of Queen's Bench in England had decided that the offence which he had committed was not forgery within the treaty. But at the close of the address of his counsel, the counsel for the

* See *post*, p. 145.

Bank of France expressed a desire that the case should be adjourned to the following morning. It was suggested on behalf of the prisoner that as he had been committed by the magistrate to await surrender, advantage might be taken of the delay to remove him from the jurisdiction of the court. This idea was indignantly repudiated by the counsel for the Bank, and the judge (Drummond, J.) granted the adjournment. When the court sat on the following morning it was found that at the time the adjournment was asked for the French police officers were in possession of the warrant of the Governor-General authorising the surrender; that during the night they had made use of this warrant, and that Lamirande was then on his way to Europe.

The Governor-General telegraphed a statement of the facts to the Secretary of State for Foreign Affairs, but he did not interfere. The friends of the prisoner telegraphed instructions to solicitors in London to endeavour to stop the French police officers while carrying Lamirande through England; but it was vacation time, and there was a difficulty in obtaining or serving a writ of habeas corpus.

The usual diplomatic correspondence followed, with the usual absence of result, and meanwhile Lamirande was convicted in France of forgery upon evidence which in England would clearly not have justified his committal on the charge.*

* 10 Lower Canada Reps. 280; 2 Canada L. J. 283, and 4 Canada L. J. 486; Dalloz, Juris. Gén. 1867, 2, 171. See *post*, p. 189, and see judgment of Drummond, J., *post*, Appendix, p. ccli.

Of the more recent cases decided in Canada, several refer simply to matters of practice, and do not need any detailed examination.* But three cases in which the questions arose of the amount of evidence to be required by the committing magistrate and the power of the court to review his decision as to its sufficiency, may properly be quoted here.

In the case of John Wesley Kernott, the prisoner was charged with committing forgery in the State of New York, and after examination before the Mayor of Toronto was committed with a view to his surrender. Writs were granted of habeas corpus and of certiorari to remove the proceedings into the Court of Common Pleas. Sullivan, J., sitting in chambers, examined the evidence given, and, pronouncing it insufficient, discharged the prisoner. He said: "There are suspicions which may arise from the comparison of handwriting, which probably induced the magistrate to commit the prisoner; but the evidence, on the whole, was not such that I could properly submit to a jury with a charge that if they believed the testimony the offence was made out. It is the duty of all judges and magistrates to be always ready to maintain the public faith with a foreign country; but the citizens of that country, when they come amongst us, are entitled to precisely the same measure of justice as our own people. Neither the treaty nor the statute contemplates the sur-

* *Reg. v. Robinson*, 6 Can. L. J. 98; *Reg. v. Morton and Another*, U. C. Reps. 19 C. P. (N. S. 5) 10, reported as *Ex parte Martin*, 4 Can. L. J. 198.

render of an accused party upon mere suspicion; and it is well that they do not, for there are so many inducements to procure the extradition of individuals upon pretence of crime falling within the treaty so as to restore them to the foreign jurisdiction for other purposes. that a treaty less guarded than the one under consideration might well lead to great oppression." The counsel for the prosecution having applied that the prisoner might be detained until more perfect evidence could be given, the application was refused, the judge saying he gave no opinion as to whether the magistrate might properly detain the accused on evidence amounting only to ground for suspicion, but he was convinced it would not be right for him to make any such order. The prisoner was fully committed on insufficient evidence, and therefore was entitled to his discharge.*

The case of Reno and Anderson, which occurred in 1868, illustrates the necessity of great precaution in surrendering accused persons to a foreign State. They were charged with having attempted to commit murder in the United States. Evidence of an alibi was given on their behalf and, the magistrate having committed them with a view to their surrender, the question of the sufficiency of the evidence was raised before Draper, C.J. He remanded them into custody, saying that the evidence of an alibi was properly received, and might be considered by the Governor-General in deciding whether he would grant or refuse extradition, but that, if sufficient evidence of

* 1 U. C. Chambers Reps. 253.

criminality was given, the magistrate ought to commit notwithstanding that there was sufficient evidence, if true, to support an alibi.* The two men were accordingly given up, but were never tried. A so-called vigilance committee broke into the gaol at Indiana, where they were confined, brought them out in company with two brothers of Reno, and forthwith hanged them.

In 1869 one Albert J. Gould was claimed by the United States on a charge of forgery. In this case there was clearly a *prima facie* case sufficient to justify the prisoner's commitment, if it remained uncontradicted ; but evidence was given to displace it by proving that he had a power of attorney from the person whose name he signed, authorising him so to use the name. Upon this, however, the person in question was called, and said that he signed the power of attorney, believing upon the representations of the prisoner that he was merely witnessing a signature, and that the seal, as indeed appeared from the document itself, was affixed after he had so signed it. The court held that if there were any view of the case which, if submitted to a jury and adopted by them, would warrant a conviction, that would be sufficient. Hagarty, C.J., said : " It is no part of my duty to weigh the evidence or the probably favourable view a jury may take of the prisoner's conduct. I find a decision of the judge before whom the complaint was investigated ; I find one view of the evidence adduced in which that decision may be upheld ; and whatever opinion I might hold as to the

* Reg. v. Reno and Anderson, 4 Can. L. J. 315.

jurisdiction to try him. The question appears to me to be, not one of jurisdiction of the Court, but rather of privilege from arrest, and I cannot say that the fact, that the defendant was brought within the jurisdiction by virtue of a warrant of extradition for the crime of forgery, affords him a legal exemption from prosecution for other crimes by him committed."

In the case of Isaac Rosenbaum, whose extradition was demanded by the government of the United States on a charge of arson, the prisoner applied for leave to produce evidence generally. The Court, in refusing the application, held, that, on a proceeding for extradition, the judge or magistrate "acting in extradition" has no authority to hear the prisoner's defence, though in the exercise of his discretion he may hear any evidence which may be tendered to show that the offence is of a political character, or one not comprised in the treaty, or that the accuser is not to be believed on oath, or that the demand for the prisoner's extradition is the result of a conspiracy.*

In the case of Charles Worms, who was brought up on a habeas corpus, charged with having "unlawfully forged the signature of the Honorable Zachariah Chandler to a certain contract, in unity with William L. Newman and John Keller, with intent to defraud, and of having unlawfully offered, uttered, disposed, and put off the said forged contract with intent to defraud, well knowing the same to be forged," Dorion, C.J., in making an

* *In re Rosenbaum*, 20 Lower Can. Jurist, Q. B., 165.

order that the prisoner should be remanded until he was delivered up under the treaty, or otherwise discharged according to law, held :

(1) That the expressions "forgery" and "utterance of forged paper" in the extradition treaty include every crime falling under that description, whether it amounts to a felony or is only a simple misdemeanour.

(2) That an error in the warrant of arrest in an extradition case does not affect the warrant of commitment, if the latter be in accordance with the charge and the evidence adduced.

(3) That it is not necessary that the depositions be taken before the magistrate who issued the original warrant.

(4) That the Imperial Extradition Act of 1870 applies to Canada, and is not inconsistent with sec. 132 of the British North American Act.

(5) That the Extradition Act merely requires that the fugitive be charged with having committed, within the foreign jurisdiction, one of the crimes enumerated in the treaty, and that the evidence of criminality be such as, according to the laws of Canada, would justify his apprehension and trial if the crime had been committed in that country ; and when the authorities in the country where the offence was committed have declared, by the issue of a warrant for the apprehension of an offender, that the acts complained of constitute an extradition offence according to their law, it only remains for the authorities in Canada to examine whether the same acts,

if committed in Canada, would under the Canadian law justify the arrest and trial of the accused for the same offence.*

By an Order in Council made on the 28th December 1882,† under sec. 18 of the Extradition Act of 1870, the operation of that Act within the Dominion of Canada is suspended, so far as it relates to any foreign State to which it applied at the date of the Order in Council, during the continuance in force of the Canadian Extradition Act of 1877 (40 Vict., c. 25) as amended by the Act of 1882 (45 Vict., c. 20).

The Act of 1877 regulates the Canadian practice, but it is not to be construed so as to contravene any arrangement made by Her Majesty with any foreign State (sec. 4, sub-s. 2).

* Application of Charles Worms for writ of habeas corpus, 22 Lower Can. Jurist, 109.

† London Gazette, January 5th, 1883.

CHAPTER V.

HISTORY OF THE LAW IN ENGLAND.

THE history of the subject in England begins with the treaties made with the United States in October 1842, and with France in 1843. There had been one or two dicta, not decisions, in the English courts, and so far as these went they recognised the duty of the extradition of fugitive criminals; but their authority was very slight, and it was clear that the right to habeas corpus at common law or by statute would, in the absence of treaties or special Acts of Parliament, prevent any proceedings for the rendition of such offenders.

In 1836, certain Spanish convicts were wrecked on the Bahama Islands while proceeding under sentence of transportation from Havannah to Cadiz. The Lieut.-Governor of the Bahamas detained them, and the Attorney-General of the colony advised that such of the convicts as had been convicted of the graver crimes, constituting *mala in se*, should be delivered up to the Spanish Government, and those convicted only of *mala prohibita* set at liberty. But the Attorney-General of England (Sir John Campbell) and the Solicitor-General (Sir R. M. Rolfe) advised that the Lieut.-Governor had no right by the law of England

to detain in custody any persons merely on the ground of their having been guilty of offences against the laws of Spain, and that the convicts in question having been wrecked on an island forming part of the territories of His Britannic Majesty were entitled to be dealt with as free agents so long as they conducted themselves in conformity to the laws in force in the Bahama Islands.*

The provision for mutual extradition between the states signing the treaty of Amiens in 1802, contained in that treaty, never came into operation in consequence of the speedy renewal of the war.

And the French Minister of Justice was exactly correct in the statement in his circular of the 5th April 1841, that extradition could not be obtained from Great Britain, because her legislation did not allow it.

Only one demand seems to have been made upon Great Britain before the date of these treaties, and that was by the United States in 1841, in the case of the *Creole*. This case has scarcely received sufficient notice; apart from the question of the necessity of legislative provisions, it is useful in illustrating the cases of Anderson in Canada, and Tivnan in England.†

On the 27th October 1841, the brig *Creole* sailed from Hampton Roads to New Orleans with a cargo of slaves. On the 7th November the negroes rose, murdered a passenger named Hewell, the owner of some of the slaves, wounded the captain and the mate, and took the

* Forsyth's Cases and Opinions on Const. Law, 341.

† See Anderson's case, *ante*, p. 95; Tivnan's, *post*, p. 140.

vessel into Nassau. At the request of the American consul, the Governor put a guard on board, and the matter was investigated by two magistrates.

Nineteen slaves were identified as having participated in the mutiny and murder, and they were placed in confinement, the Governor refusing to give them up to the American Government. The rest were set at liberty. The nineteen were tried at Nassau for piracy, and acquitted. The law authorities in England were unanimously of opinion upon this case that they could not be given up in the absence of an Act of the English Parliament giving power to the executive.*

For this reason the extradition clause of the Ashburton treaty, which has already been quoted, while it took immediate effect in America and Canada, did not come into operation in England until August 1843, when the Act 6 & 7 Vict., c. 76, was passed. Some objection was made to this Act in the House of Commons, where fears were expressed that advantage might be taken of the treaty to get back fugitive slaves on pretended charges of robbery. The Attorney-General (Sir F. Pollock), being appealed to on the subject, said that, upon a charge of crime being made against a fugitive, his personal status in the country from which he had fled would be wholly immaterial.

Upon this an amendment was moved by Mr. Hawes, to exclude slaves from the operation of the Act, but it was defeated by 59 to 25.†

* Ann. Reg., lxxxiv. 312. Hansard, lx. 27-30, 318-327.

† Hansard, lxxi. 566.

The previous chapter, 6 & 7 Vict., c. 75, had made provision for carrying into effect the treaty with France, which had been signed at London on the 13th February 1843.* The Acts were very similar, differing chiefly in the enumeration of the crimes for which extradition should be accorded to the respective countries.

To France, criminals might be delivered if they were accused of "murder (comprehending the crimes designated in the French penal code by the terms assassination, parricide, infanticide, and poisoning) or of an attempt to commit murder, or forgery, or of fraudulent bankruptcy;"† to the United States, if they were charged with "murder, or assault with intent to commit murder, or piracy, or

* 6 Hertlet's Commercial Treaties, 344.

† As to the meaning of this term in the treaty, refer to 5 & 6 Vict., c. 122, § 32. The following is the definition in the law of France:—"Sera déclaré banqueroutier frauduleux et puni des peines portées au Code pénal tout commerçant failli qui aura soustrait ses livres, détourné ou dissimulé une partie de son actif, ou qui, soit dans ses écritures, soit par des actes publics ou des engagements sous signature privée, soit par son bilan, se sera frauduleusement reconnu débiteur de sommes qu'il ne devait pas."—Code de Commerce, liv. 3, tit. 2, ch. 2, art. 591. It will be observed that this definition does not include the offence of not surrendering to the bankruptcy jurisdiction, and it is clear that such failure to appear cannot properly be called a crime, and ought not to be a ground of extradition. It is simply the making default in a civil proceeding. However, the Acts of 1870 and 1873, and the treaties made in pursuance of them, substitute the term "crimes against bankruptcy law," for "fraudulent bankruptcy," referring to the offences mentioned in the Debtors Act, 1869 (32 & 33 Vict., c. 62). (Roche and Hazlitt's Bankruptcy Law, edit. 1873, p. 207.)

arson, or robbery, or forgery, or the utterance of forged paper."

In both Acts it was provided that, upon requisition duly made, it should be lawful for the Secretary of State to issue his warrant signifying that such requisition had been made, and requiring all justices of the peace and other magistrates and officers of justice to govern themselves accordingly. Thereupon it should be lawful for any such justice of the peace to examine, upon oath, any person or persons touching the truth of the charge, and upon such evidence as, according to the laws of that part of her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she should be so accused had been there committed, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to the requisition. In every case, "copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested, upon the oath of the party producing them, to be true copies of the original depositions," might be received in evidence of criminality.

It was provided in the Act relating to France, that no justice of the peace or other person should issue his warrant for the apprehension of any such supposed offender, until it should have been proved to him, upon oath or by affidavit, that the party applying for such warrant was the bearer of a warrant of arrest, or other

equivalent judicial document, issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it should appear to him that the acts charged against the supposed offender were clearly set forth in such warrant of arrest or other equivalent judicial document.

No provision similar to this was inserted in the Act relating to America.

In both Acts it was provided, that any person committed under them might be discharged if he were not delivered up within two months. By the 8 & 9 Vict., c. 120, the powers of these Acts were extended to the police-magistrates of the metropolis; and it was provided that their warrants (forms of which were given in a schedule) might be executed in any part of England.

Attempts were almost immediately made to put these Acts in force. The first case was that of J. C. Clinton, who was claimed by the American Government on a charge of forgery, committed in the United States several years before. The magistrate before whom he was brought thought fit to discharge him, on the ground that the *original* depositions had been produced, whereas the statute only applied to *copies*.* Meanwhile a case had been submitted to the Attorney and Solicitor-General (Sir F. Thesiger and Sir F. Kelly), who advised that the treaty and Act were retrospective, and suggested that Clinton

* Egan on Extradition, 48.

should be re-arrested in term time, and that the judge to whom he might apply for a habeas corpus should be pressed to refer the matter to the full Court.* He was accordingly again arrested, and a habeas corpus was then obtained from Mr. Baron Platt. On its return, Mr. Knowles, Q.C., and Mr. Clarkson for the prisoner, contended that the Act 6 & 7 Vict., c. 76, could not have a retroactive effect. It could not have such effect in America (the United States Const., Art. 3, § 9, providing that no *ex post facto* law should be passed in the United States), and the contracting parties and the British Parliament must be held to have intended perfect reciprocity. Besides, as a Criminal Act, it must be construed strictly. Sir John Bayley, for the prosecution, relied on the fact that the Act, with regard to France (6 & 7 Vict., c. 75), expressly excluded all offences committed antecedently to the date of the treaty, while that relating to America did not. To give the Act retrospective effect would not be to make an *ex post facto* law, as it created no new offence, assigned no new punishment, and did not alter the nature of the evidence required.

Mr. Baron Platt, after short consideration, having no doubt upon the matter, declined to leave it for argument before the full Court, and discharged the prisoner. He said that there was much weight in the argument with regard to reciprocity, and, explaining the words of the Act by reference to the terms of the treaty, he was bound

* Forsyth's Cases and Opinions on Const. Law, 366.

to hold that the word "committed" meant "committed after the date of the treaty." *

The next case was that of Jacques Besset, who was claimed by the French Government on a charge of fraudulent bankruptcy, and being brought before Alderman Magnay (then Lord Mayor), was by him committed, 23rd September 1844.

A writ of habeas corpus was granted by Mr. Justice Wightman at chambers, but stood over until term by consent. It was then argued in the Queen's Bench before Lord Denman, C.J., and Williams, Coleridge, and Wightman, J.J., by Mr. Montagu Chambers for the prisoner, and Mr. Edwin James against the discharge. Sir F. Thesiger, Att.-Gen., and Mr. Gurney, watched the case for the Lord Mayor. Several objections were taken to the commitment, the chief being, that its conclusion, "until he shall be discharged by due course of law," was bad (*Mash's case*, 2 W. Bl., 805). Lord Denman, delivering judgment, said: "I regret that, on the first application which has come before us under this statute, the warrant is so defective that we cannot allow the Act to take effect. Neither we nor the gaoler have any power but such as the statute gives; and its provisions have not been rightly pursued. We are asked to remand the prisoner on our own authority, as charged with a crime: but we know nothing of the crime, unless as it is brought before us by the warrant;

* 6 L. T., 66. See *Metzger's case*, *ante*, p. 53. See also the case of *Ex parte Bouvier*, *post*, p. 163. The doubts then expressed caused the passing of the Extradition Act, 1873.

or, I should rather say, we have no authority of the kind in such a case. If we could act in the manner suggested, the statute would have been unnecessary. The prisoner must be discharged."

The other judges concurred.

Lord Denman—"It is proper that it should be understood that this application is at common law. The statute 31 Car. II., c. 2, is not necessary to the right of making it."*

The same result as had occurred in the cases of Clinton and Besset attended almost all the efforts made to put the law in force. Between 1843 and 1852 France claimed fourteen fugitives. In only one case was the extradition obtained, and that was through the person being apprehended in the island of Jersey. This caused a not unnatural dissatisfaction on the part of the French Government, who from time to time made representations to England upon the subject. In 1846, in answer to one of these representations, Lord Aberdeen informed Count St. Aulaire that the note of the French Ambassador had been referred to the Home Department and to the law officers of the Government, and that these authorities were of opinion, in which Lord Aberdeen entirely concurred, that, to obviate the difficulty complained of by the French Government, a new Convention and a new Act of Parliament were necessary; and that in such new Conven-

* 6 Adolphus and Ellis, 481; 14 L. J. (M. C.) 17, 1 New Sessions Cases, 337; 9 Jur. 66. See Metzger's Case, 1 Barbour (S. C. of N. Y.), 254.

tion the clause requiring that French subjects should not be delivered up unless the evidence of their guilt was such as to warrant their commitment for trial by the law of the country in which they had taken refuge, ought to be altogether omitted, as being contrary to the real intentions of the contracting powers, and productive of many causes of insuperable difficulty in carrying out the objects of the Convention. A draft of the new Convention was sent to the Count by Lord Aberdeen in the same year. Notwithstanding this expression of opinion, nothing more was done in the matter until May 1852, when the Government of Lord Derby concluded a Convention with France,* and introduced into the House of Lords a Bill to give effect to it in England. This Convention largely increased the list of crimes for which extradition might be granted; the complete list being "murder and attempts to murder; the procuring abortion; rape; manslaughter; sending threatening letters; bigamy; child-stealing; perjury; subornation of perjury; coining or uttering counterfeit coin; counterfeiting the great seal, or using the counterfeit seal; counterfeiting or falsifying of public securities and bank-notes authorised by law; using such counterfeit securities and notes; counterfeiting the puncheons used for marking articles of gold and silver, and using the counterfeit puncheons; counterfeiting the public stamps, and using the counterfeit stamps; feloniously forging, and uttering forged instruments; arson; robbery; burglary; stealing in a church or chapel; housebreaking; larceny, or embezzlement

* 9 Hertale's Commercial Treaties, 281.

by clerks or servants; embezzlement by public officers; fraudulent bankruptcy, and complicity in fraudulent bankruptcy (only in those cases which in the United Kingdom are considered as felony, and punishable by the penalty of transportation); destroying a ship or other merchant vessel; and piracy." In a series of twenty carefully drawn clauses these crimes were described by the names appropriate to them in the French penal code, in the law of the United Kingdom, and, where necessary, in that of Scotland. And it was agreed that to every demand in extradition the article of the law under which the charge was made should be annexed, and that the demand should only be made by the French Government in those cases in which the acts charged should in France be considered as *crimes*, and be punishable with severe and degrading punishments (*peines afflictives et infamantes*), and by the English Government when the said acts should be considered as felonies, and be punishable with death, or transportation, or imprisonment with hard labour. The Convention applied to persons who had been convicted, as well as to those simply accused.

It was provided, that in the case of a demand by the French Government the ambassador should produce either a sentence of conviction (*arrêt de condamnation*), or a warrant for apprehension (*mandat d'arrêt*), clearly setting forth the nature of the crime with which the fugitive should be charged, and that the Home Secretary, having verified the authenticity of these documents, and ascertained that the crime therein specified was within the

Convention, should issue his warrant to a magistrate notifying him of these facts. Thereupon the magistrate should issue his warrant of arrest, and, being satisfied when the accused was brought before him of his identity, should order him to be conveyed to the frontier to be there delivered to the agent of the French Government.

In the Convention of 1843, no exception was made of persons charged with political offences. That omission was remedied in the Convention of 1852, the seventh article of which provided—"No accused or convicted person who may be surrendered shall, in any case, be proceeded against or punished on account of any political offence committed prior to his being surrendered, nor for any crime or offence not described in the present Convention, which he may have committed previously to his being surrendered; and proof of his having been so surrendered under this Convention shall be a good and valid defence against any proceeding on account of any political offence previously committed, and shall entitle the party to an immediate acquittal."* In introducing into the House of Lords the Bill to give effect to this Convention, Lord Malmesbury, the Foreign Secretary, who had negotiated it, said that he was authorised by the French Ambassador to declare that any Article which the wisdom

* It will be observed that under this Convention a person who had been surrendered could have been tried for other offences than that for which his rendition had been granted, provided that such other offences were not political, and were within the list of crimes contained in the Convention.

of Parliament or the ingenuity of our legal profession could invent or draw up, that would perfectly secure political offenders from being surrendered, and prevent any use of the Convention that might fall on such offenders, the French Government would be willing to accept. This declaration put an end to any serious opposition on this point, but grave question was raised as to the wisdom of abolishing the rule which required evidence of the fugitive's guilt to be produced before the magistrate. The discussion being adjourned, Lord Malmesbury on a later evening proposed certain amendments, the principal of which was that the Secretary of State should not issue his warrant until documentary proof of the accusation was produced, certified under the hand of the *Juge d'Instruction*. The introduction of any amendment, however, caused a serious difficulty, as it would necessitate a supplementary Convention. And attention was called in the House of Lords to the fact, that a law had recently been revived in France which provided for the trial of foreigners before French tribunals for crimes committed out of France. The law was not a new one, and it was similar to the provisions of several European codes; but a strong feeling was expressed in the House of Lords upon the subject, and the discovery, united with the other and more practical difficulties caused the abandonment of the Bill. The Convention has therefore never come into operation.* It would in many respects have been an improvement upon the former

* See Debates upon the Bill, Hansard, cxxii. 192, 498, 561.

treaty. "It was," says Sir George Cornewall Lewis, "drawn with care and ability, and by it the obstacles which have rendered the Treaty of 1843 inoperative would have been removed." * But it would have been easy to devise a scheme which would have greatly facilitated extradition without dispensing with the requirement that *prima facie* evidence of guilt should be produced before a magistrate, a safeguard to the fugitive which it is not likely or desirable that an English Parliament will ever consent to take away.

↓ For twenty years (from 1844 to 1864) no case of extradition was argued before English Courts. During this time France had made various demands, (seven between 1854 and 1856, none between the latter year and 1859,) but in no case was the extradition obtained.

The United States were more successful. Between 1854 and 1859, eleven such applications were made, and in six of them the criminal was given up. These six were all cases of murder or attempt to murder; † and they all occurred on the high seas, on American ships which put into Liverpool, so that the witnesses were on board, and could easily appear before the magistrate.‡

At the beginning of the year 1864, a case came before

* On Foreign Jurisdiction, &c., p. 40.

† Some of these appear to have been strictly cases of piracy. See U.S. v. Gibert, 2 Sumner, 24; and Judge Story's judgment therein.

‡ Sir G. C. Lewis on Foreign Jurisdiction, &c., p. 40. For the result of applications made by England to France, see Appendix, p. ccli.

the Court of the Province of New Brunswick which arose out of the Civil War in the United States, and involved several important questions of Extradition Law. This was the case of David Collins and another, who were charged with piracy on board the United States' brig *Chesapeake*. The facts were not disputed. The *Chesapeake* traded from New York to Portland, Maine, carrying freight and passengers. She left New York on the 5th December 1863, and upon the 7th, when she was about twenty miles from the United States' coast at Cape Cod, some of the passengers who had come on board at New York took possession of the vessel in the name of the Southern Confederacy. A short conflict took place, in which the second engineer was killed, and the mate and the chief engineer were wounded. The crew were then put ashore in a pilot boat, and the Confederate flag was hoisted, but the vessel was soon afterwards retaken by a United States' gunboat. None of the persons who had been concerned in the seizure of the brig were then taken prisoners, but several of them, including Collins, McKealy, and Seeley, were afterwards found in New Brunswick, and the United States' consul at St. John addressed a letter to the Provincial Secretary of New Brunswick, requesting that under the provisions of the Ashburton Treaty these persons should be arrested with a view to their examination on a charge of piracy. A warrant was accordingly issued by the Lieutenant-Governor of the province authorising the arrest. The letter from the United States consul was accompanied by depositions sworn before the

magistrate at St. John, N.B., on the 22nd December, and upon the issuing of the Lieutenant-Governor's warrant, a warrant of arrest was issued by the same magistrate, and the three persons named were apprehended and brought before him on the 4th of January 1864. The charge proceeded with was that of piracy. The objections afterwards taken before the Court were raised before the magistrate, but were overruled by him. The evidence of the acts of the prisoners being given, and not in fact disputed, witnesses were called on behalf of the defence to show the belligerent character of the acts charged. The Queen's Proclamation of Neutrality was put in, and also a certified copy of the commission establishing a Court in the Province of New Brunswick for the trial of piracy and other offences committed on the high seas, passed at Westminster the 11th day of April 1829, by writ of Privy Seal. The police-magistrate, however, held that the treaty included piracy committed on an American vessel on the high seas, and that the prisoners had not shown authority from the Confederate Government to commit the acts charged, and added, that, looking at the circumstances of the case, he considered the seizure of the *Chesapeake* was not an act of war, but was done *animo furandi*. He therefore committed the prisoners with a view to their extradition. A writ of habeas corpus was at once sued out, and the case was elaborately argued before Judge Ritchie by Gray, Q.C., and Weldon for the prisoners, and Wetmore, Q.C., and Tuck for the United States. Judge Ritchie took time to consider, and on

the 14th March 1864, delivered a full and very able judgment, discharging the prisoners. He held that the requisition for the surrender was insufficient, as it was not made by a public minister of the United States, but by a consul not claiming any special authority to ask for the surrender, and not indeed asking for it in his letter. The taking of depositions before the police-magistrate was entirely without jurisdiction, as he had no evidence before him that the persons had been legally charged in the United States with the commission of the offence for which their surrender was to be asked. Further, the piracy charged was not municipal piracy, but piracy by the law of nations justiciable wherever the offender might be found, and as the Court of New Brunswick had jurisdiction in the case, the prisoners could not be given up under the treaty. The police-magistrate, he added had no jurisdiction in cases of piracy,* and the warrant of commitment was bad for showing that the prisoners were examined on charges not included in the warrant of the Lieutenant-Governor, and that upon the face of the warrant no adjudication appeared that the evidence was sufficient according to the law of the province to justify committal for trial.†

* This was a mistake. The Imperial Statute 12 & 13 Vict. c. 96, gave colonial magistrates jurisdiction in such cases; but it was not brought to the notice of Judge Ritchie. It was not, however, upon this ground that the prisoners were discharged.

† "The 'Chesapeake.' The case of David Collins et al. Compiled from the Original Documents." Published by J. & A. McMillan, St. John, N.B., 1864. The author is indebted for a

In the same year the main question involved in this case came before the Court of Queen's Bench in England, and was similarly decided. This was the case of *Tivnan* and others,* charged with having "on the high seas, on board a certain American ship, committed the crime of piracy, within the jurisdiction of the United States of America."

The circumstances of the case were briefly these. On 16th November 1863, the United States' steamer *Joseph L. Gerrity* left Matamoras for New York with cotton. Just before she started, six persons, among whom were the prisoners, came on board as passengers, and on the following night they seized the ship, telling the captain to consider himself a Confederate prisoner. The leader of the party, a person named Hogg, who was believed by the captain to be a major in the Confederate service, said at the time of the seizure that he had proper authority for the act, but did not exhibit any papers.

A few days after the seizure the captain and some of the crew were set adrift in a small boat. The prisoners were afterwards discovered in Liverpool, and on application from the American consul there, the Secretary of State issued his warrant under the 6 & 7 Vict., c. 76. They were thereupon brought before a magistrate at Liverpool, and, the examinations having been taken, were

copy of this pamphlet to the kindness of an anonymous friend in New Brunswick.

* 5 Best and Smith, 645; 33 L. J., M. C., 201 (*Tivnan*); 12 W. R., 851 (*Turnan*); 10 L. T., N. S., 499 (*Tivnan*).

remanded to prison, and it being understood that no further evidence would be taken,* counsel instructed on their behalf by the agents of the Confederate Government moved in the Court of Queen's Bench for a habeas corpus. The writ was granted, and on its return Messrs. Edward James, Q.C., Littler, and J. H. James moved that the prisoners be discharged.

They contended:—

1. That the Treaty of the 22nd August 1842, and the Stat. 6 & 7 Vict., c. 76, founded upon it, extended only to acts declared piracy by the municipal law of either of the contracting parties, and not to piracy by the law of nations, which is punishable anywhere. The words of the statute, "delivering up to justice" persons "seeking an asylum," (*i.e.*, a place where they cannot be punished,) showed that the words "within the jurisdiction" must be taken to mean "within the exclusive jurisdiction" of the respective States. *Re Kaine*, judgment of Nelson, J., 14 Howard, Sup. Court Cases, U.S., 137; Marshall's Speech, 5 Wheaton, Sup. Court, U.S., Appendix i.; Opinions of the Attys.-Gen., viii. 84.

2. That the warrant of a justice of the peace under this

* "Remands were made from time to time, but there has been no final commitment. It is not in general the practice of this Court to interpose before the magistrate has given his final decision, seeing that on a future hearing before him fresh evidence might be adduced. I say this, speaking with reference to the future, for I cannot help seeing that the last of these remands was made in order to ask our assistance."—Compton, J., 5 Best and Smith, 682.

statute, to apprehend or commit a person for trial, must be founded on one from the Secretary of State, who has no power to issue his except on the view of an original warrant issued and depositions taken in America, which did not appear here. Klüber, § 66. Martens, Précis, § 101. Opinions of Attys.-Gen., vi. 485, and vii. 6. *Re Kaine*, 14 Howard, Sup. Court, U.S., 103.

3. That the warrant of the magistrate was bad for not showing that all the witnesses before him were examined upon oath.* *Mash's Case*, 2 W. Bl., 805. *Kite and Lane's Case*, 1 B. and C., 101. *Nash's Case*, 4 B. and A., 295.

4. That there was no evidence before the magistrate of piracy by the law of nations. *The Melomane*, 5 Rob. Adm., R 41. *The United States v. Palmer*, 3 Wheaton, 610.

Messrs. Lush, Q.C., Milward, and Vernon Lushington, *contra*.

1. The term "jurisdiction" has two different significations. First, its primary, natural sense—the right to deal with particular things or persons. Second, its far more common acceptation—the territorial limits within which that authority is exercised. It is in the latter sense that the word is used in the treaty and the statute.

Either of the expressions "jurisdiction" or "territory"

* "Suppose the magistrate's warrant defective in this respect, it could be cured by a fresh warrant. We would not discharge on habeas corpus for such a reason."—Blackburn, J., 5 Best and Smith, 668. See *St. Alban's Raid*, *ante*, p. 104.

in the treaty would extend to all places where the laws of the country have authority, and would therefore include offences committed on shipboard ; since, for the purposes of law, protection, and punishment, a ship is part of the territory to which she belongs. Wheaton's Int. Law, 7th edition, (Lawrence,) 208. *Reg. v. Lopez*. Dears and B., 525. Marshall's Speech, 5 Wheaton, Sup. Court, U.S., App. i.

On the second and third points they were stopped.

4. The act done was on its face piratical, and not belligerent. There was no proof that the prisoners seized the ship for the Confederate Government, or even that they belonged to the Confederate States.

The second and third points all the judges held to be immaterial, and on the fourth they thought they were not entitled to say that there was no evidence of piracy upon which the magistrate might commit. At the same time they agreed that the establishment of a belligerent character would put an end to the charge.

Upon the main question the Court was divided : Crompton, Blackburn, and Shee, JJ., held that the prisoners were either belligerents, and therefore not triable at all, or pirates *jure gentium*, and in that case being triable anywhere they could not be delivered up under the treaty. "Jurisdiction" was held to mean "exclusive jurisdiction," and the word piracy, therefore, meant only "municipal piracy," which alone would be within that exclusive jurisdiction. Cockburn, C.J., dissented, holding that the term "piracy," there being

nothing to limit its operation, must be taken in its comprehensive sense of piracy *jure gentium*. And as this crime was cognizable by the tribunals of all countries, the word "jurisdiction" could not be taken to mean "exclusive jurisdiction." "The language," said the Chief-Justice, "is most comprehensive, and why then is it to be construed in a limited sense? It is said, and with truth, that the primary and original mischief which the statutes of extradition meant to prevent, was that of persons committing crimes in one state, and escaping beyond the reach of the law of that state, and so enjoying impunity; and it is also contended that for that purpose alone were those statutes passed. That that was their primary and principal object there can be no doubt, but that it was the only one I entertain great doubt; for it is impossible not to see that the mischief which it is the object of all civilised states to prevent, is not limited to such cases. An offence may be cognizable, triable, and justiciable in two places—*e.g.*, a murder by a British subject in a foreign country. A British subject who commits a murder in the United States of America may be tried and punished here by our municipal law,* which is made to extend to its citizens in every part of the world. But it would be highly inconvenient, except in certain exceptional cases, that he should be tried in this country for that crime, because criminals escape, not only

* 24 & 25 Vict., c. 100, § 9, re-enacting 9 Geo. IV., c. 31, § 7. "Murder or manslaughter, or being accessory before the fact to either." See *R. v. Sawyer*, B. and R., 294.

by being beyond the reach of the law which they have offended, but in consequence of the difficulty, if not impossibility, of proof, unless the offender is brought to justice where the offence has been committed. If, therefore, I find the language of a statute large enough to comprehend both instances, it would be highly inexpedient to restrict it to one alone."

Little notice was taken by the other judges of this point, and it has not since arisen in practice, but it is clear that the case supposed by the Lord Chief-Justice was within the rule laid down by the other judges, and that the English Government would have been bound under that rule to refuse the extradition of the murderer, and to insist that if tried at all he should be tried here, by proceedings which would be at once unfair to the prisoner, and costly and difficult to the prosecution.

The case is now met by the Extradition Act, 1870, § 6, which provides that the surrender may take place whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over the crime charged.

In the following year a case arose, the decision in which was of equal importance with that just cited, and established a very valuable principle.

The prisoner, Charles Windsor, had been the paying teller in the Mercantile Bank of New York, and as such he had the custody of all the money in the vaults of the bank. On the 28th October 1864 he asked the receiving teller to do duty for him for the next few days, and

handed him the "first teller's proofs," where was the following entry:—"Vault, 207,098 dollars reserve." He never returned to the bank, and upon inspection of the vault a large deficiency was discovered, amounting in specie alone to upwards of 30,000 dollars. A warrant was then issued in New York for his apprehension upon the charge of "forgery" under the following section of the New York Forgery Act, 1822:—

"Every person who, with intent to defraud, shall make any false entry, or shall falsely alter any entry made in any books of accounts kept by any *monied* corporation within this state, or in any book of accounts kept by any such corporation or its officers, and delivered, or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim, or credit shall be, or shall purport to be, discharged, diminished, increased, created, or in any manner affected, shall, upon conviction, *be adjudged guilty of forgery in the third degree.*"*

* 2 Rev. Stats., New York, 673, § 35. Upon the words italicised some questions were raised; and, probably in order to avoid any difficulty in future cases, the following provision was substituted for that stated in the text:—"Every person who with intent to defraud makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this state or in any book of accounts kept by any such corporation or its officers, and delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim, or credit is or purports to be discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the third degree." So far as extradition is concerned, the alteration has no effect.

Windsor was traced to England, and the Secretary of State having issued his warrant, he was arrested, and, after examination before Sir Thomas Henry at Bow Street, was committed to prison to be detained until delivered up according to the Act.

Civil proceedings had also been instituted in this country against the prisoner, and he was in custody for the purpose of compelling him to put in bail, as well as upon the criminal charge. A writ of habeas corpus was granted by Mr. Justice Mellor, and the validity of the return was argued before the Court of Queen's Bench.*

Messrs. M'Mahon and Edward Clarke, for the prisoner, contended that as the offence charged was forgery only by the local law of the State of New York, it did not come within the Extradition Treaty, which applied only to offences which were recognised under the designations employed in the treaty and the subsequent statute, as murder, piracy, forgery, &c., by the general law of both countries.

Anderson's Case, 20 Upper Canada Q. B. Rep. 124; Wheaton, Int. Law, 236; Ortolan, Règles Internationales, 327; 1 Phillimore, Int. Law, 413.

Minor points were also raised upon the wording of the New York statute.

Messrs. Hardinge Giffard, Q.C., and Poland, *contra*.

* 6 B. and S., 522; 34 L. J. M. C., 163; 13 W. R., 655; 12 L. T. N. S., 307; 6 New Rep., 96; 10 Cox, C. C., 118; 11 Jur. N. S., 807.

1. The offence was forgery by the common law of England. This point, however, was abandoned.

2. The constitution and government of the United States recognised the laws of the several States. And in *Re Tivnan* * it had been decided that the treaty applied to municipal or statutable offences.

Cockburn, C.-J., held that the terms of the treaty and statute must be held to apply to offences which in the legislation of both countries have some common element. This act had not the essential character of forgery. It was not forgery by the law of England, nor by the general law of the United States. And where one or the other country, party to an Extradition Treaty, and *à fortiori*, where a component part of one or the other country, thinks proper to make an offence not within the general law of both countries, an offence with a particular designation, that circumstance did not of itself bring the offence within the statute.

Blackburn and Shee, JJ., concurred, and the prisoner, so far as he was detained upon the criminal charge, was discharged.†

In November, 1864, and March, 1865, the French ambassador addressed communications to Earl Russell upon the subject of the failure of the French demands for extradition, the surrender having been obtained in only

* 5 Best and Smith. See *ante*, p. 140.

† Compare the case of *Lamirande*, *ante*, p. 113, and *post*, p. 159. In the treaty with France, "forgery" is used as equivalent to "*faux*," which latter includes falsification of accounts.

One case during the twenty-two years that the Convention had been in operation. No action was taken upon the subject by the English Government, and, on the 4th December 1865, the ambassador gave the six months' notice of the termination of the Convention provided for in the 4th Article. The reason given was twofold—(1) That the English Government declined to surrender persons who had been convicted; and (2) that the requirement of the production before a magistrate of *prima facie* evidence of the guilt of the person accused was an insuperable obstacle to the execution of the Convention in England, and differed from the general practice of the other European Powers. On the 20th January 1866, Earl Cowley replied to this notification.

“Her Majesty’s Government,” he said, “regretted that the Convention had produced so little result; its effect with regard even to the demands made by England having been unsatisfactory. The system could not, however, be altered without having recourse to Parliament, and recent experience had shown that there would be great difficulty in obtaining from Parliament any further modification in regard to the requirements of law and the usage of Great Britain in dealing with persons accused of crime.”

“The legislature had made a concession in consenting to allow copies of depositions to be received in lieu of parole evidence. And there did not appear to be any insuperable difficulty in the production of evidence of this nature before the English magistrate. This, with

evidence of identity, was all that was required for the commitment of a fugitive."

"Her Majesty's Government, however, seeing how serious would be the evil of an abrogation of the Convention, were prepared to consider any suggestions as to the means of making it more effective."

In a conversation with M. Drouyn de Lhuys, of about the same date, Earl Cowley made some remarks on the subject of the surrender of condemned persons. "The concession," he said, "could not be made to France without a fresh Act of Parliament; and indeed it would appear to be of very little use, unless it is intended by the Imperial Government to include among persons condemned those condemned *par contumace*. Criminals condemned after trial seldom find means of escaping the punishment awarded them, but condemnation *par contumace*, or without trial in the presence of the accused, is at such variance with the whole legislation of Great Britain, that it would seem hopeless to expect the sanction of Parliament to such a measure.* On the other hand, it is to be observed that persons in this position might always be proceeded against in the category of accused persons."†

In the course of the correspondence which ensued, another objection was found to exist to the English practice. By the 6 & 7 Vict., c. 75, § 2, it is provided that

* No exception of persons so condemned was contained in the Convention of 1852. See *ante*, p. 133.

† See case of Charles Dubois (*alias* Coppin), *post*, p. 154.

the copies of depositions produced shall be certified to be true copies by the person producing them ; and the result of this was that some person, usually a police-officer, had to inspect the French proceedings to see if the judge had made a true certificate. This was resented by the French judges as an indignity, and it was agreed that the objection might be removed by a short Act of Parliament, providing that the copies should be accepted in evidence if the signature of the judge who signed them were authenticated by the seal of the French Minister of Justice. A Bill was accordingly prepared, and passed by the legislature with slight opposition.* A clause, however, was introduced, limiting its operation to one year, to insure the full discussion of the subject in the next session of Parliament. In a letter of the 21st May 1866, the French ambassador stated that it had been agreed that a new attempt should be made to put the treaty in execution, and that with this object a demand in extradition had lately been addressed to the English authorities. In the interest of this experiment, and without withdrawing its objections to the Convention, the French Government consented to a prolongation of the treaty for six months.†

This proposal was accepted by the English Government.

The demand referred to was for the extradition of

* 29 & 30 Vict., c. 121.

† Correspondence respecting the Extradition Treaty with France, July 1866.

Victor Wideman, on a charge of fraudulent bankruptcy. He was arrested and duly committed; a rule for a writ of habeas corpus was, however, obtained, and the motion to make it absolute was argued before the Queen's Bench on the 12th June 1866.

Messrs. M'Mahon and Edward Clarke for the prisoner.

1. The Convention was at an end, and with it the Statute 6 & 7 Vict., c. 75. The Convention provided that it should end at the expiration of six months after notice given by either party; and that notice having been given by France on the 4th December 1865, the Convention was no longer in existence. No provision had been made for waiver of notice.

2. No proof had been given before the magistrate that the acts charged constituted fraudulent bankruptcy under the French law, or that the prisoner was a French subject, and amenable to that law.

The Solicitor-General (Sir R. P. Collier) and Mr. Hannen, *contra*.

1. The notice having been waived, the Convention remained in force.

2. There was *prima facie* evidence of acts of fraudulent bankruptcy. The court (Cockburn, C.-J., Mellor and Blackburn, JJ.) held that the notice must be a continuing notice, and that, as there could be no doubt of the nature of the acts charged, the strict proof that they constituted the crime of fraudulent bankruptcy by the French law was unnecessary.*

* See Taylor on Evidence, §§ 1423, 1425, 1525.

An application upon similar points was afterwards made to the Lord Chancellor (Cranworth), who granted a writ of habeas corpus, but upon return made and argument thereupon, remanded the prisoner, and he was surrendered.*

In 1866 a case occurred which was of great importance as involving the question whether a fugitive criminal, who had been condemned in a foreign country *par contumace*, was an accused person within the terms of the English treaties. For twenty years after the passing of the first Extradition Act in 1843 the opinion prevailed that a person who had been so condemned could not be surrendered, the treaties with France and the United States not providing for the rendition of persons who had been convicted. When Sir Thomas Henry became chief magistrate of police of the metropolis he requested the Home Secretary to take the opinion of the law officers of the Crown upon this point, and they advised that a person so condemned *par contumace* could not be surrendered.† Had this opinion been upheld by the courts of law, the advantage to continental nations of entering into extradition treaties with Great Britain would have been but small. In 1866, however, the question was actually raised and received judicial decision. In July of that year a requi-

* 12 Jurist., N. S., 536; 14 L. T. N. S., 719. This is said to have been the first instance in which a virtual appeal was made from the Court of Queen's Bench to the Lord Chancellor. The precedent was followed in the case next stated.

† Evidence of Sir T. Henry: Report of Select Comm., 1868 p. 17.

sition was made by the French Government for the rendition of Charles Dubois, otherwise Coppin, as a person accused of committing within French territory the crime of forgery; and a warrant of arrest having been granted, the prisoner was brought, in the absence of Sir Thomas Henry, before Mr. Vaughan, a police-magistrate at Bow Street. In support of the charge a number of depositions were produced which purported to have been taken, some before a *Juge de Paix* of the Canton of Villeneuve-sur-Yonne, and some before the *Juge d'Instruction* at Troyes, and showed that the prisoner had uttered a forged bill of exchange. A copy of the *mise en accusation* signed by the "greffier" of the Cour Impériale at Paris was also put in evidence, and was under the seal of the Cour Impériale and that of the Minister of Justice. The depositions, which were originals, were under the seals of the Minister of Justice and the Minister of Foreign Affairs. A witness was called to identify the prisoner as the person named in the *mise en accusation*, and he was asked in cross-examination by Mr. Edward Clarke, who appeared for the prisoner, whether Dubois had not been tried and convicted *par contumace*. He said he had been so convicted, and sentenced to imprisonment for life. It was then objected on behalf of the prisoner that the evidence did not show forgery, but only the uttering of forged paper, and that this was not an offence within the treaty.*

* The treaty with the United States was concluded in August 1842, and put in force by 6 & 7 Vict., c. 76; the treaty with France was concluded in February 1843, and put in force by 6 &

The magistrate held that the uttering of a forged document was forgery. This point, however, became immaterial, and was not finally decided, a letter being produced in which the prisoner confessed the forgeries he had committed. The point was then raised that the prisoner, having been convicted and sentenced, was not an accused person within the terms of the treaty. Upon this M. Rasul, a French advocate, was called to prove that the conviction was annulled by the surrender of the person accused, and the magistrate said he should hold that the prisoner was within the treaty, and should issue his warrant committing him for the purpose of his surrender. The counsel for the prisoner thereupon applied for a remand such as had been granted in the case of Tivnan,* or that the issue of the warrant should be delayed in order that application might be made for a writ of habeas corpus, but Mr. Vaughan peremptorily refused to accord any delay.† Nor would he grant a remand in order that the prisoner might give formal evidence of the conviction *par contumace*, saying he did not think the point material. The magistrate's warrant was accordingly issued, but an immediate application to the Home Secretary secured

7 Vict., c. 75; the two Acts receiving Royal Assent on the same day. The treaty with the United States includes the "utterance of forged paper;" that with France did not.

* See *ante*, p. 140.

† A formal remand or delay in issuing the writ need not be asked for now even in vacation time. The Extradition Act secures to the accused the safeguard which Mr. Vaughan so peremptorily refused.

some delay, and the Lord Chancellor (Chelmsford), who came to town for the purpose, and heard the application at his private residence, granted a writ of habeas corpus, which was made returnable on the first day of Michaelmas Term, and was then argued. Mr. Edward Clarke moved for the discharge of the prisoner on the grounds—

1. The depositions produced purported to be authenticated according to the provisions of the Act 29 & 30 Vict., c. 121, whereas they had been taken prior to the passing of that Act. This point was at once overruled.

2. The documents produced were not properly authenticated. The Act 6 & 7 Vict., c. 75, provides that no magistrate shall issue a warrant of arrest with a view to extradition, unless it shall be proved to him upon oath or by affidavit that the person applying for such warrant shall be the bearer of a warrant of arrest, or other equivalent judicial document issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge. By the 29 & 30 Vict., c. 121, it is provided that warrants of arrest and copies of depositions may be received in evidence, if the warrant of arrest purport to be signed by a judge or other competent magistrate of the country in which it was issued, and if the copies of depositions are certified under the hand of such judge or magistrate to be true copies, and the signature of the judge or magistrate be certified by the seal of the Minister of Justice. In this case there is no warrant at all, and the copy of the *mise en accusation* bears no judi-

cial signature whatever, but is simply signed by the clerk to the Cour Impériale. The depositions produced bear no signature of a judge or magistrate who issued or signed any warrant of arrest or other equivalent judicial document.

3. The prisoner, having been condemned *par contumace*, is no longer in the category of accused persons. His status has been changed by the conviction. (Code d'Instr. Crim., §§ 476, 477, 478, 518, 519.)

Sir John Rolt, A.-G., Sir W. Bovill, S.-G., and Mr. Hannen, for the Crown.

1. The documents produced are sufficient. The copy of the *mise en accusation* is equivalent to a warrant, and is authenticated by the seal of the Cour Impériale, and that of the Minister of Justice. The depositions are originals, not copies, and therefore need not be authenticated according to the provisions of the Acts cited.

2. As to the condemnation *par contumace*, that is merely provisional, and is intended to operate as a sort of process to compel appearance; and when a person so condemned is arrested or surrenders himself, the condemnation is annulled, and he is tried as if no such conviction had ever taken place. And here there is no sufficient proof of such a conviction.

Mr. Edward Clarke in reply.

1. It is not the fault of the prisoner if no sufficient proof has been given of the condemnation *par contumace*. The French authorities have refused to supply the necessary evidence.

2. A person condemned *par contumace* is in the French Code called a "condemned," not an "accused" person (§§ 465, 466); he is in a less favourable position at his subsequent trial (§§ 518, 519); the sentence at once alters his civil status, and becomes irrevocable at the expiration of twenty years.

3. There is no power to authenticate a seal, or to receive original depositions unless they are properly certified.

The Lord Chancellor at once gave judgment, remanding the prisoner for the purpose of his being surrendered; and, while acknowledging the importance of the questions raised, he said he felt no doubt upon either of them. With regard to the documents, he held that as the originals had been produced the Acts above cited did not apply, but that, even if they did, all the formalities required had been substantially fulfilled. Upon the question of the character and effect of a conviction *par contumace*, the judgment was full and clear, although comment was made on the inadequacy of the proof that in this case any such conviction had taken place. His Lordship quoted the evidence given by the French advocate, M. Rasul: "If a man is accused of forgery in France, and a judgment *par contumace* obtained against him, it would be a sentence of the court without the assistance of a jury. If that man is arrested or surrenders himself, that judgment is annulled, so that it is exactly the same as if no proceedings had been taken against him, and then he undergoes his trial for the offence with which he was

charged,' and continued,—“Without this evidence it would have been impossible for the magistrate to have any competent knowledge upon the subject ; for, as Lord Brougham said in *The Sussex Peerage Case* (11 Cl. and Fin. 115), ‘ The judge has not organs to know and to deal with the text of the foreign law, and therefore requires the assistance of a lawyer who knows how to interpret it.’ But, having this assistance, and being referred by M. Rasul to the Code Napoléon, we may venture to look into the text and to the Article 476 of the Code d’Instruction Criminelle, upon which he founds his opinion, which is in these terms:—‘ Si l’accusé se constitue prisonnier ou s’il est arrêté avant que la peine soit éteinte par prescription, le jugement rendu par contumace et les procédures faites contre lui depuis l’ordonnance de prise de corps ou de se représenter, seront anéantis de plein droit et il sera procédé à son égard dans la forme ordinaire.’ It will be observed that the article commences by calling the alleged offender, after a judgment *par contumace*, the *accused* and not the *condemned*. And as upon his appearance or upon his apprehension judgment against him is annulled, and he is to be put upon his trial for the offence, I do not see how he can be described otherwise than as an accused person.”

“ But it is said that the judgment *par contumace* places the party who afterwards surrenders himself, or is apprehended and brought before the court, in a less favourable position upon the trial which ensues, and Articles 518 and 519 of the Code d’Instruction Criminelle were referred to to establish this assertion. I ought, perhaps, to refuse to

look at these articles without a skilled interpreter, but I am so anxious that the case should be thoroughly investigated, that I am disposed to permit this further irregularity in the proceedings."

"It appears to me that the object and effect of these articles have been entirely misunderstood. The title of the chapter under which they are merged is, 'De la Reconnaissance de l'Identité d'un individu condamné évadé et repris;' and Article 18 is to this effect:—'La reconnaissance de l'identité d'un individu condamné évadé et repris sera faite par la cour qui aura prononcé sa condamnation.' It merely provides for establishing the identity of the party before he is sent to his trial. And in a note to this article in the edition of the Code which I have, it is said, 'Au reste, cette identité reconnue comme l'arrêt de condamnation se trouve anéanti de plein droit, l'accusé devrait être soumis à de nouveaux débats devant les jurés.' The 519th Article merely provides that all the judgments with regard to the identification of an accused party shall be without the assistance of a jury. It does not appear, therefore, that the trial of a person condemned *par contumace* differs at all from that of a party who is put upon his trial without any previous condemnation."

"But in order that no part of the argument for the prisoner may be disregarded, I will assume that it has been established that the judgment *par contumace* does work some prejudice to the party upon the trial, either by reducing the amount of necessary proof, or by changing its character, or by making him liable to costs; but how could

that possibly take him out of the category of accused persons? He has ceased to be a person condemned, because his condemnation is annulled upon his appearance, and he is to take his trial for offences with which he stands charged. What better, I ought rather to say what other, description of him could be given than that of a person accused? " *

In the year 1868, a Committee of the House of Commons, very strongly constituted, was appointed to consider the whole matter of Extradition Law. It held many meetings, and examined a number of witnesses who had practical experience of the working of the existing treaties, and of the faults and defects which had so seriously impaired their usefulness; and the result of the recommendations of the Committee was the passing in 1870 of the Extradition Act (33 & 34 Vict. c. 52), for which the country is indebted chiefly to the ability of Sir Thomas Henry, and which is in itself a comprehensive and ably drawn code of law upon this subject. The principal defect of the law before 1870 was that, while requiring formalities before the arrest, which often gave warning to the criminal, and enabled him to escape, it did not secure to him, when actually arrested, any opportunity of testing before one of the superior courts of law the legality of the arrest and surrender. In the great majority of cases in which the British Government had consented to grant extradition, the police-officers, when actually armed with the warrant of arrest, had been unable to find the fugitive; and, on the

* L. R. 2 Ch. App. 47; 36 L. J. Ch. 80; 12 Jur. (N.S.) 867; 15 L. T. (N.S.) 165.

hand, the danger existed that, as in *Lamirande's case*,* another person might be given up who was not guilty of any offence within the treaties. There were other and serious defects. Neither the then existing treaties nor the Acts of Parliament by which they had been put in force, contained any exception as to political offenders, or any provision preventing the trial of a fugitive when once surrendered for offences other than that for which his rendition had been claimed. And very great difficulty was found in negotiating fresh treaties with foreign powers, in consequence of the necessity of obtaining from the British Parliament, after each treaty was signed, an Act of Parliament embodying and enforcing its provisions. This requirement was strongly objected to by foreign states, and had prevented the conclusion of several treaties with regard to which negotiations had commenced ; while it had prevented the treaty actually made with Prussia in 1864 from being put in force. These defects were pointed out in the first edition of this work, and the remedies there suggested were all contained in the Extradition Act of 1870. The practice under that Act will be fully dealt with in a later chapter, but the general principles of the statute may be shortly stated. It laid down a complete system of Extradition Law, defining the persons who might be the subjects of extradition, and the crimes for which surrender might be granted ; dispensed with formalities antecedent to the arrest, but required every magistrate, on committing a prisoner for the purpose of surrender, to

* Vide p. 113, *ante*.

tell him that he would not be given up for fifteen days, and that during that time he could apply for a writ of habeas corpus in order to test the validity of the commitment. It made provision for the non-surrender of political offenders, and for the insertion in the treaties, whenever necessary, of a stipulation that the person whose surrender should be granted should only be tried for the offence for which he had been claimed. And subject to the limitations contained in the statute, power was given to the Executive Government to make fresh treaties, and to put them in force by an Order in Council instead of a special Act of Parliament.

The first case which came before the English courts under this Act was that of a man named Bouvier, who was in September 1872 claimed by the French Government as having been convicted, *par contumace*, of the offences of *abus de confiance*, fraudulent bankruptcy, and forgery. He was arrested in Jersey, and the warrant by which he was there committed to prison with a view to his surrender made mention of all three offences. A writ of habeas corpus was obtained, and the case argued before the Court of Queen's Bench; the important question being raised whether the effect of the Extradition Act, 1870, had not been to render the treaty with France entirely inoperative.

That treaty was originally put in force in Great Britain by the Act 6 & 7 Vict., c. 75, but that statute was repealed by the Extradition Act, 1870, and the obligation of the treaty has since depended on the terms of Section 27

of the Act of 1870. That section provides that the Act "(with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act) in the case of the foreign states with which those treaties are made in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act."

Two points were raised on behalf of the prisoner by Mr. George Browne, his counsel :—

1. As a judgment is indivisible, the surrender of the prisoner to the French authorities on a judgment including *abus de confiance*, an offence not within the treaty or the Act of 1870, would be a surrender for an offence not contemplated by the Act, and therefore would be illegal.

2. The treaty with France has ceased to have any legal effect, as neither by it nor the French law is any provision made for preventing the trial of a prisoner surrendered under it for an offence other than that for which the rendition was demanded.

It was further suggested that the diplomatic correspondence which had taken place between the British and French Governments amounted to a termination of the treaty by six months' notice, as provided by Article 4 of

that treaty. It, however, appeared that its operation had been continued by mutual agreement between the two Governments, and by such agreement it was declared to be in force until September 1873. It is not clear that under the provisions of the Extradition Act, 1870, a convention once renounced could be continued by an informal agreement between the Governments concerned, but the point was not pressed and would probably have been held to be decided by the case of Wideman.*

Sir J. D. Coleridge, A.G., and Mr. C. Bowen appeared for the Crown, and upon the second point, which indeed included the first, relied upon an affidavit made by M. Adolphe Moreau, the officially appointed counsel to the French Embassy in London. The most material parts of this affidavit were the following paragraphs:—"I say, speaking from my own knowledge, that according to the law of France provision is made that a fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in France for any offence committed by him prior to such surrender other than the extradition crime proved by the facts upon which the surrender is granted; and I say, speaking from my own knowledge and experience, that this law is observed in practice by the French tribunals and authorities. . . . It is a principle of French and of international law, that the individual whose extradition has been granted can only be prosecuted and tried for the very crime for which his extradition has been

* See *ante*, p. 152.

obtained ; and I say, speaking from my own knowledge and actual experience, that this is the invariable practice of the French tribunals." The full account of the French law contained in the next chapter will enable the reader to put its proper value upon this affidavit. It was, however, uncontradicted, and was accepted by the Court as decisive of the question. Cockburn, C.J., Blackburn, J., and Mellor, J., accordingly remanded the prisoner to custody, holding that provision was made by the French law that he should be tried only for the offence for which the surrender was asked. Upon the other question, whether in the absence of any such provision the 27th section of the Extradition Act, 1870, would have the effect of keeping the Convention in force, they expressed very serious doubts. Cockburn, C.J., said if it were necessary to decide the point he should say that the language used was sufficient to have that effect ; Blackburn, J., said he had very serious doubts whether the Legislature had effected by that section what was intended, and that he, if required to decide the point, should take time to consider ; Mellor, J., said he was inclined to agree with the argument of the Attorney-General, but felt some doubt ; and all the judges expressed a strong opinion that it was desirable to set the question at rest by further legislation.* As this was the only

* *Ex parte Bouvier*, 27 L. T. (N.S.) 844. It is curious that this point has not yet been taken in any case under the American treaty. It is quite clear that neither that treaty nor the law of the United States contains the provision required by the Extra-

point on which further legislation was really wanted, it is not easy to see why it was entirely neglected when the amending Act was passed in 1873.

In the following year occurred the case of *Elise Counhaye*, who was claimed by the Belgian Government under the Treaty of July 31, 1872, charged with complicity in the fraudulent bankruptcy of her husband. This case also came before the Court of Queen's Bench, and was argued on behalf of the prisoner by Sir J. Karslake, Q.C., and Messrs. Day, Q.C., and R. V. Williams. They contended :

1. That the Act applied only to crimes "by bankrupts" against the Bankruptcy Law, and therefore not to the act charged against the prisoner, who was not a bankrupt.

2. The definition of "extradition crime" in Section 26 of the Act of 1870 is "a crime which, if committed in England or within English jurisdiction would be one of the crimes described in the first schedule to the Act;" and the Debtors Act, 1869 (32 & 33 Vict., c. 62), sect. 11, which contains the law relating to the punishment of fraudulent debtors, only renders criminal the offence of fraudulent removal of property in contemplation of bankruptcy when committed by the bankrupt, and does not include accomplices.

dition Act, 1870. The question is a very important one, and deserves to be fully argued. Nor can the case of *Bouvier* be accepted as conclusive even with regard to France. The point may be raised again upon more satisfactory affidavits as to the law of France than were before the Court in that case.

3. The crime charged against the prisoner was committed before the Extradition Act, 1870, was passed, and it is contrary to principle in the absence of express provision to give retrospective effect to a criminal statute.

4. The depositions taken in Belgium, and received in evidence against the prisoner by the police-magistrate, should not have been so received, as they were taken in the absence of the prisoner, and she had no opportunity of cross-examining the witnesses.

5. The treaty provides that the requisition for the surrender shall be made to Her Majesty's Principal Secretary of State for Foreign Affairs, accompanied by a warrant of arrest or other equivalent judicial document issued by a judge or magistrate duly authorised to take cognizance of the acts charged against the accused in Belgium, together with duly authenticated depositions or statements taken on oath before such judge or magistrate. Here the warrant of arrest, if it discloses any crime at all, discloses one committed in France, and not in Belgium, and the depositions were not taken before the judge who issued the warrant.

Sir J. D. Coleridge, A.G., and Mr. C. Bowen appeared for the Crown, but were not heard upon all the points raised, the Court, consisting of Blackburn, Quain, and Archibald, JJ., being clearly of opinion that the prisoner not being a bankrupt was not within the terms of the Act, and must be discharged. They, however, held that the depositions were admissible against the prisoner, it being for the magistrate to decide what weight he would

attach to statements so taken. They also held that the provisions of Article 2 of the treaty might be waived by the Secretary of State, and that therefore the fact that the depositions were not signed by the magistrate who issued the warrant was immaterial. With regard to the question of the retrospective operation of the statute, Blackburn, J., said he considered the point so doubtful, that it was desirable the Legislature should cause the Act to be amended.*

An important case, under the Act of 1870, was that of Huguet, who was claimed by the French Government in 1872 on a charge of fraudulent bankruptcy. The warrant of arrest having been issued, he was apprehended and brought before Mr. Vaughan, one of the police-magistrates at Bow Street. Certain evidence was then taken, and the case was adjourned. At the adjournment Sir Thomas Henry presided, and further evidence was produced, but the witness who had been called on the first occasion did not appear, and on evidence being given by the clerk to the police-court that his deposition had been taken in the presence of the accused, and that the

* *Re Elise Counhaye*, L. R. 8 Q. B., 410; 42 L. J., 217; 28 L. T. (N.S.), 761. Partly in consequence of this decision, a further Extradition Act was passed in the year 1873 (36 & 37 Vict., c. 60), upon which the reader will find some observations in the concluding chapter of this book. It is only necessary here to say that, besides giving retrospective effect to the Act of 1870 and the treaties made thereunder, it extended the list of crimes for which extradition might be accorded, and included accomplices within the provisions, which previously applied only to the principal offenders.

latter had been allowed to cross-examine, Sir Thomas Henry received in evidence the deposition so taken. In the Court of Exchequer, Barons Martin and Pollock held that the deposition was properly admitted. Kelly, C.B. expressed great doubt upon the subject, but it was not necessary to decide the point, as all the learned barons were of opinion that without this deposition there was sufficient evidence against the prisoner. Mr. Montagu Chambers, Q.C., and Mr. Besley appeared for the prisoner, and Sir J. D. Coleridge, A.G., and Mr. C. Bowen for the Crown. The very important question was in this case raised, whether the Court would examine the sufficiency of the evidence before the police-magistrate, and the Court held that it was not called upon to do so. Upon this point Baron Martin said: "The question is, was this proceeding within the jurisdiction of Sir Thomas Henry? I don't say that if there had been no evidence before him, or he had acted contrary to law, we would not have discharged the prisoner, but it appears to me that all the proceedings have been properly taken. This is not a court of appeal from his decision, and it is for him to decide whether or not the evidence is sufficient." * This question of the power of the Court to examine the weight as well as the competency of the evidence before the police-magistrate was again raised in England in the case of *R. v. Maurer* † in 1883, in which Mr. Bowen Rowlands, Q.C., in moving for a rule nisi for a habeas

* *Ex parte Hugnet*, 29 L. T. (N.S.), 41.

† 10 Q. B. D., 513; 52 L. J. M. C., 104; 31 W. R., 609.

Corpus, contended that the magistrate's decision, that there was a *prima facie* case against the prisoner of a bankruptcy crime according to the law of this country, was against the weight of the evidence. In refusing the rule, Field, J., said: "It appears to me that the decision in Huguet's case is completely in accordance with the principles upon which the Courts act, and have always acted, with reference to the adjudications of justices in general, and without that decision I think we should have come to the same conclusion. The statute says that the magistrate shall have the same jurisdiction as nearly as possible as if the prisoner were brought before him charged with an indictable offence in England. So long as the magistrate keeps within his jurisdiction, we have no power to interfere with his decision. It is only when there is no jurisdiction, as when there is no evidence before the magistrate, that we can interfere. It seems to me that in Huguet's case all the judges intended to decide that it was not for this Court to weigh the evidence, if there was any reasonable evidence of an extradition crime for the magistrate to act upon. If there is such evidence, the magistrate is not going beyond his jurisdiction in committing the prisoner upon such evidence." Mathew, J., gave judgment to the same effect.

In 1877 it was decided in *R. v. Wilson* * that when the treaty with a foreign state, in consequence of which

* 3 Q. B. D., 42; 48 L. J. M. C., 37; 37 L. T. (N.S.), 544; 26 W. R., 44.

the Extradition Act is applied by Order in Council in the case of that state, is narrower in its terms than the Act, the operation of the Act is limited to what is consistent with the treaty. Alfred Thomas Wilson was claimed by the Swiss Government under the treaty of 1874, which provided that no British subject should be surrendered to Switzerland. It was proved that the prisoner Wilson was a British subject, but the chief magistrate at Bow Street held that he was not entitled to go beyond the Act and look at the terms of the treaty, and that, as there was no provision in the Act against the surrender of British subjects, he ought to commit the prisoner with a view to his extradition. The case came before the Queen's Bench Division on the return to a writ of habeas corpus, and Mr. Edward Clarke, for the prisoner, contended that the treaty recited in the Order in Council must be read together with the Act. Messrs. C. Bowen and H. D. Greene, contra, argued that the legislature could not have intended that it should be the duty of the magistrate to ascertain the law from the text of diplomatic papers, and that the effect of the treaty was merely that the surrender of our own subjects should not be compulsory. The Court, however (Cockburn, C.J., Mellor and Field, JJ.), held that the Act was clearly limited by the treaty, and ordered the discharge of the prisoner.

In *R. v. Jacobi and Hiller*,* in 1881, the prisoners had obtained goods from a Mayence firm by false pretences

* 46 L. T. (N.S.), 595 n.

made in letters written from Amsterdam, and made orally at an interview in Amsterdam with the agent of the Mayence firm. The goods were sent to the prisoners at Amsterdam, and were by them sent to England, whither they also betook themselves. Their extradition was demanded by Germany, and, on application for a rule nisi for a habeas (Mr. A. G. McIntyre for the prisoners, Sir H. James, A.G., and Mr. A. L. Smith for the Crown), it was argued that the offence, if any, was committed in Holland, and not in Germany. The Court, however (Pollock, B., and Stephen, J.), held on the facts that the crime was committed in Germany. The question argued in *R. v. Nillins*,* as to whether a person may become liable to be surrendered by England as a fugitive criminal of a country in which he has never set foot, does not appear from the report to have been discussed in the case of *Jacobi and Hiller*.

The right of one state to claim from another the extradition of a subject of a third state was discussed in 1882 in *R. v. Ganz*,† in connection with the Netherlands Treaty of 1874. Edward Nathan Ganz was committed by the chief magistrate at Bow Street for extradition to the Netherlands. Letters of naturalisation as a subject of the United States, found upon the prisoner, were produced before the magistrate, and, on the application for a rule nisi for a habeas, these were supplemented by an affidavit by the prisoner that he was not born in the Netherlands.

* See *post*, p. 175.

† 9 Q. B. D., 93; 51 L. J. Q. B., 419; 46 L. T. (N.S.), 592.

Mr. Besley (with him Mr. Tickell), for the prisoner, contended that the treaty authorised the surrender only of subjects of one of the contracting parties escaping to the dominions of the other, and not of subjects of a third state.

Sir H. James, A.G., and Mr. A. L. Smith, for the Crown :—Any person residing in a country is amenable to its criminal law, and the treaty contains no exception in favour of subjects of third states.

Pollock, B., in refusing the application, said : “ This matter, no doubt, depends not only on the English statute, but also on the terms of the treaty ; but, before alluding to the treaty, I would say that the leading principle which underlies all questions of nationality, as applied to crime committed within any particular country, is this : Whatever rights, civil or otherwise, a man may have which may be affected by his domicile, it is, and must be, perfectly clear by the law of all nations that each person who is within the jurisdiction of the particular country in which he commits a crime is subject to that jurisdiction ; otherwise the criminal law could not be administered according to any civilised method. . . . With reference to this general rule, we must consider the provisions of the treaty to which our attention has been called.” These, it was held, were wide enough to include the prisoner. A point was argued as to the authentication of the foreign warrant, which will be noticed in the chapter on Practice.

A question of considerable importance was discussed

in 1884 in *R. v. Nillins*.* A demand was made by the German Government for the extradition of one Nillins for forgery and obtaining goods by false pretences. The charge made before the magistrate was that the prisoner had written and sent certain letters containing the alleged false pretences from the town of Southampton in this country, to certain persons carrying on business within the jurisdiction of the German Empire, and that by these means such persons had been induced to part with certain goods, some of which were delivered to the prisoner's order at places in Germany, and some in England, and that the prisoner had sent to such persons, by post from Southampton, certain forged bills of exchange in payment for such goods.

On the argument of a rule nisi for a habeas corpus, Sir F. Herschell, S.G. (with him Sir H. James, A.G., and Messrs. R. S. Wright and Danckwertz), contended for the Crown:—

1. That the crime was committed in Germany.
2. That the prisoner was a fugitive criminal within the Extradition Act and the German Treaty. He referred to Art. I. of the treaty, to the definition of "fugitive criminal" in sec. 26 of the Act of 1870, and cited *R. v. Jacobi*.†

Mr. Clifton, for the prisoner:—

1. The crime was committed in England by posting the letters.

* 53 L. J. M. C., 157.

46 L. T. (N.S.), 595 n. See *ante*, p. 172.

2. The preamble of the treaty refers to "fugitives from justice." It cannot be said that the prisoner is a fugitive from Germany, as he committed the crime in England, and has not been in Germany.

The Court (Cave, Day, and A. L. Smith, JJ.) held unanimously, though with some doubt on the part of Day, J., on the second point, that the crime was committed in Germany, and that the prisoner was within the definition given in the Act, and also within Art. I. of the German Treaty.

Since the passing of the Extradition Act, 1870, the British Government has entered into treaties upon this subject with Austria-Hungary, Belgium, Brazil, Denmark, Ecuador, France, Germany, Guatemala, Hayti, Honduras, Italy, Luxemburg, the Netherlands, Russia, Salvador, Siam, Spain, Sweden and Norway, Switzerland, Tonga, and Uruguay. The treaty with Honduras was denounced by that country in 1877, and that with Portugal relates only to the Indian possessions of the British and Portuguese Governments. It was followed by a convention made in January 1880 between the respective Governors-General of British and Portuguese India. The Siamese Treaties of 1883 and 1885 relate to British Burmah. The full text of the English treaties at present in force will be found in the Appendix to this work, and also the Fugitive Offenders Act, 1881, which provides in certain circumstances for the apprehension in any part of Her Majesty's dominions of a person accused of having committed an offence in any other part, and his return.

to the part of Her Majesty's dominions from which he is a fugitive.

The extradition of criminals from British India is regulated by the Indian Foreign Jurisdiction and Extradition Act, 1879 (Act XXI. of 1879), and by the Act passed to give effect to the above-mentioned convention between the Governors-General of British India and Portuguese India (Act IV. of 1880).*

* See also Mayne's Commentaries on the Indian Penal Code (12th edition), notes to sec. 4.

CHAPTER VI.

HISTORY OF THE LAW IN FRANCE.

THE law of extradition in France differs in every respect from that of the countries already treated of. The question of the propriety of delivering up a demanded fugitive has never been discussed before a French tribunal. That is held to be a purely political question with which courts of justice have no concern.* On the other hand, the questions with which the French courts have dealt have seldom arisen in proceedings in England or America. All the cases which are found in the French reports are

* The principle of extradition does not depend upon treaties, but upon the sovereign rights residing in the ruler of each State in virtue of which he maintains good relations with his neighbours; to put in action the power of extradition is a measure of international right emanating from the will of the executive power. See Faustin Helie, *Tr. de l'Inst. Crim.*, t. 2, § 132, p. 667; Mangin, *Tr. de l'Action Publique*, No. 75; Trebutien, *Cours Elémentaire de Droit Crim.*, t. 2, p. 132; Le Sellyer, *Tr. du Droit Crim.*, t. 5, No. 1952; Dalloz, *Jurisp. Gén.*, 1867, i. 281; 1876, i. 512; 1884, i. 384.

Governments can extend or modify treaties at their will, and can grant or receive the extradition of criminals whether any treaty exist or not. Comtesse de la Grandville, *Dalloz, Jurisp. Gén.*, 1827, i. 288; Sirey, *Collect. Nouv.* 8, 1, 628; *Rep. Gén.* vii. 141.

those of criminals who, having been delivered up to France, have tried there to dispute the legality of their surrender, or have raised some objection to the manner of their trial.

These cases are very simple, and require no detailed analysis, but they have considerable interest as illustrating another side of the Law of Extradition. A convenient starting-place for this part of the history is found in a Circular of the French Minister of Justice which was issued in 1841, and lays down with great fulness the theory of French law upon the subject.

The only question of any importance arising before this time seems to have been as to the right of the government to surrender a French subject. That this right was possessed by the kings of France until 1830 seems to be acknowledged, but it was contended later, that it was a right which existed in the persons of the kings of France, and that, in the absence of positive law, the chief of the Government which issued from the revolution of that year did not inherit it. Dalloz, however, maintains that it existed by virtue of the Circular of the 25th October 1811, which recognised the right of the Government to grant the extradition of a Frenchman, and regulated its exercise.* The question, however, is now of no importance, as by the year 1841 it had been thoroughly established that no French subject could be given up.†

* Dalloz, Dict. Gén. Suppl. 229.

† See Correspondence respecting Extradition, 1866, p. 14. Case of the Baron de Vidil, Rep. Gén. de Jurisp., vii. 140, *post*, Appendix, p. ccli.

It is stated by several French authors, that in 1831 the French Government declared that for the future it would neither grant nor demand extradition, and notified to the Swiss Confederation its renunciation of the then existing treaties,* but the fact that fresh treaties were made in 1834 and 1838 makes this statement appear improbable: it is discredited by Fœlix;† and the silence of the French Minister upon the matter, when he is mentioning treaties which had been in existence long before 1831, seems conclusive as to the incorrectness of the statement.

In the Circular of 1841 the French Minister of Justice mentioned that France had four treaties with foreign powers:—with Spain (29th September 1765), Switzerland (18th July 1828), Belgium (29th November 1834), and Sardinia (23rd May 1838).‡ He added, that even in the absence of treaties she could obtain the extradition of criminals from other countries except from Great Britain and the United States. He then, after stating the principles of justice and expediency on which the practice of extradition was founded, mentioned two important

* Mangin, Tr. de l'Act. publ., No. 74; Ortolan and Ledean, Tr. de Min. publ., 231.

† Fœlix, 2, 329.

‡ It would appear that other treaties had formerly existed, but had either been renounced or allowed to fall into disuse. In Mr. Jefferson's letter of 1791, referred to at p. 34 of this work, he says:—"I know that such conventions exist between France and Spain, France and Sardinia, France and Germany, France and the United Netherlands, between the several sovereigns constituting the Germanic body, and I believe very generally between co-terminous States on the continent of Europe."

limitations. It should never, he said, be claimed or granted for trifling offences. They were not sufficiently injurious to the welfare of the state, and he added, "Il faut une raison puissante pour faire rechercher sur la terre étrangère l'homme qui s'est puni par l'éloignement volontaire de sa patrie."

The other exception regarded political offences :—

"Les crimes politiques s'accomplissent dans des circonstances si difficiles à apprécier, ils naissent de passions si ardentes, qui souvent sont leur excuse, que la France maintient le principe que l'extradition ne doit pas avoir lieu pour fait politique. C'est une règle qu'elle met son honneur à soutenir. Elle a toujours refusé, depuis 1830, de pareilles extraditions ; elle n'en demandera jamais."*

Of the remainder of the Circular, which deals with the rules to be observed in all cases of extradition, the following is a summary : †—

1. Extradition does not apply to persons who have taken refuge in their own country ; consequently France can only demand the extradition of a Frenchman, or of a foreigner who has taken refuge in a country other than that to which he belongs.‡

* The treaty between France and Switzerland of the 18th July 1828, Art. 5, includes specifically "les crimes contre la sûreté de l'Etat." This provision has, however, never been acted upon, nor reproduced (Blondel, *Monog. Alfabétique*, 42), and is considered to be tacitly abrogated. Letter of M. Nestor Treitt, Report on Extradition, 1868 ; Appendix.

† The Circular is given in full in Dalloz, *Jurisp. Gén.*, 1841, iii. 440.

‡ Under this rule France in 1861 refused the surrender of Baron

2. Extradition can only be admitted with regard to a person accused of an act punishable with severe and degrading punishment (*peine afflictive ou infamante*), that is to say, of a crime other than a political crime, and not of a misdemeanour (*délit*). It follows that if the extradition has been obtained of a person accused at once of a crime and a misdemeanour, he ought not to be put upon his trial for the misdemeanour.

So in the case of the surrender of a person accused of an ordinary crime, and a political crime, he should only be tried for the former, and if acquitted, or after the expiration of his punishment, he must leave France within a time fixed by the Government.

de Vidil, though there was no such limitation in the treaty between Great Britain and France. England it seems would not refuse a surrender upon the ground of nationality. See the judgment of Cockburn, L.C.J., in Tivnan's case, *ante*, p. 144; and Barley's case, *ante*, p. 100. As to the rule in the United States, see pp. 39, 46.

Martens says that a State should not surrender its own subjects. *Droit des Gens*, § 101. Faustin Helie is of opinion that such a surrender is quite proper. *Droit Intern.*, 672. Kluit holds the surrender legitimate, but says that political convenience will generally prevent it. *De Deditione Profugorum*, 61. There is some difference of opinion among foreign writers as to whether a fugitive should be given up to any country but his own. Martens, *Droit des Gens*, § 101, says not; Faustin Helie, *Tr. de l'Inst. Crim.*, 2, 672, and Kluit, *De Deditione Profugorum*, 61, say that such a surrender would be perfectly legitimate. The question was mooted in the case of Marguerite Diblancs, a Belgian subject, who committed murder in London, and fled to Paris, but she was surrendered without any formal decision upon the point.

3. The order of extradition states the act upon which it is founded, and that act alone should be investigated.

Whence it follows, that if, during the trial of the crime for which extradition has been granted, proofs are discovered of another crime, a new demand in extradition must be made.*

4. The Government alone is competent to decide the scope of an order of extradition, and to interpret its terms; the courts must suspend proceedings until that decision is given.†

5. The Government alone is entitled to make a demand of extradition upon a foreign power; the *procureurs-généraux* can only correspond with the magistrates of neighbouring and friendly states in order to obtain information.

6. The *Procureur-Général* should forward to the department of the Ministry of Justice, with an explanatory letter, the demand of extradition, accompanied by a warrant of arrest, or by a decree of the *chambre des mises en accusation*, or by a decree of condemnation, either after jury trial or *par contumace*, according to the state of the proceedings.

The Belgian and Spanish Governments are in the habit of only granting extradition upon the production of the decree of the *chambre des mises en accusation*.

* See Lesellyer, *Traité du Droit Crim.*, 5, 1954; Fœlix, *Droit Intern.*, 580; *Rep. Gén. de Jurisp.*, vii. 143.

† Comtesse de Granville, *Dalloz, Jurisp. Gén.*, 1827, i. 288; Burgerey, *Dalloz, J. G.*, 1841, i. 440; Davia, *Dalloz, J. G.*, 1847, iv. 249; Dareau, *Dalloz, J. G.*, 1853, v. 215; Chardon, *Dalloz, J. G.*, 1865, i. 48; Renneçon, *Dalloz, J. G.*, 1867, i. 281.

7. If, pending the demand of extradition, the act which has prompted it has lost the character of a crime, and become a misdemeanour, or if the accusation has been annulled (*s'il est intervenu un arrêt de non lieu*), the minister should be informed without delay, that the demand may be withdrawn, or the accused set at liberty and conducted to the frontier.

8. When the accused is delivered up, he is at first in the charge of the administrative authority, then received by the *Procureur-Général*, who takes measures for sending him to the place where the accusation should be prosecuted.

x 9. The Government has the exclusive right of deciding upon demands of extradition made by foreign Governments, although the magistrates of these countries sometimes forward warrants, orders of arrest, or records of conviction, directly to the magistrates of the French tribunals; these documents should immediately be transmitted to the department of the Ministry of Justice.

10. In France the execution of a Royal Decree of Extradition is intrusted to the administrative authority.

11. If the foreigner whose extradition has been granted is at the time under accusation, or undergoing a sentence, the execution of the order of extradition must be postponed until the decision upon the charge or the expiration of the sentence. Nevertheless, the extradition cannot be hindered by anything but the requirements of public justice, as, for instance, if the foreigner were detained for debt.

The Circulars upon Extradition of 6th October 1810,

12th June 1816, and 31st July 1821, were abrogated by that of 1841.

The rule that a prisoner surrendered upon a charge of crime, but accused also of misdemeanour, should only be tried for the crime, had been acted upon in the case of Dermenon, who was given up by Geneva in 1840 on a charge of fraudulent bankruptcy. The *renvoi* of the *chambre des mises en accusation* ordered that, if acquitted on this charge, he should be tried for simple bankruptcy and breach of trust. He was so acquitted, and the Minister of Justice held himself bound to re-deliver him to Geneva. That state refused to receive him; but the question whether this operated as a new extradition, or whether he ought to be liberated at the French frontier, was held to be purely a political matter.*

The rule was also recognised in the case of Sauve, a deserter from the French army, accused of theft. He was delivered up by Switzerland on the express condition that he should not be tried as a deserter, but only for the theft for which he had been condemned *par contumace*. It was held in this case, that the judges empowered, according to the information, to judge of the misdemeanour as well as the crime, ought to declare themselves without jurisdiction over the former. Sauve was tried and condemned as a deserter; but this judgment was overruled by the Conseil de Révision de Paris, and he was sent back to be allowed to purge his contumacy, and to be tried for the thefts charged against him.†

* Dalloz, Jurisp. Gén., 1840, i. 438.

† *Ibid.*, 1862, v. 159.

Other cases, however, show that the principle must be taken with some modifications.

In the case of Wolf Cromback in 1845, the prisoner was delivered up by Switzerland for *faux en écriture de commerce*. The order of extradition was general, but this was the only description of forgery specified in the treaty under which he was claimed. On his trial the writings proved not to be of a commercial character, and he was convicted of *faux en écriture privée*. He thereupon prayed the court that he might be sent back to Switzerland, quoting Dermenon's case; but this point was overruled, and he was sentenced to five years of *réclusion*, and to *l'exposition*. He appealed to the Cour de Cassation, which, after deliberation in Chambre de Conseil, decided, that as the treaty provided for the delivery up, not only of those declared guilty, but of those pursued as such, in virtue of warrants certified by the proper legal authority, the legality of the extradition and of its consequences must be tested, not by reference to the gravity and legal character of the crime as described in the sentence of condemnation, but with regard to the original charge against him upon which he was pursued. The appeal was therefore rejected.*

In the same year the Abbé Grandvaux, charged with *faux en écriture privée et d'enlèvement de mineure*, was given up by Tuscany, with an express stipulation that he should not be tried for the latter offence. The *chambre des mises en accusation*, however, finding there were no

* Dalloz, Jurisp. Gén., 1845, i. 111. See some observations upon this singular decision in Rep. Gén. de Jurisp., vii. 143.

sufficient grounds for the heavier charge, remanded him, and instructed the Cour d'Assises to try him for the smaller offence. On appeal against this *arrêt*, the Cour de Cassation held that the criminal courts must proceed without regard to the conditions of extradition. That was a matter for the consideration of the Government, which might prevent the execution of the sentence, and re-deliver the criminal.*

In the case of Pascal, surrendered by Spain in 1858, the Cour de Cassation held that if the appellant, whose extradition had been granted upon a charge of rape, and of an indecent assault, with violence, had only been convicted of an indecent assault, without violence, upon a child of less than eleven years, it was clear that it was the same act differently described, and therefore there was no ground for a reference to the limitations in the order of extradition,† and in the case of Rich,‡ surrendered by the United States in 1877 on a charge of rape, the Cour de Cassation held a conviction for the attempt only, to commit that crime, good, as it was founded on the facts which were the ground of the surrender.

It has been decided that the conditions in a grant of extradition are stipulations in favour of the accused, which he may waive if he thinks it advisable. Upon such waiver he may be tried not merely for a crime not within the extradition treaty under which he was surrendered, but for a crime entirely unconnected with the matter which has been the ground of his extradi-

* Dalloz, *Jurisp. Gén.*, 1845, i. 405. † *Ibid.*, 1863, v. 176.

‡ *Ibid.*, 1877, i. 463.

tion.* But if, being accused of fraudulent bankruptcy and simple bankruptcy, and given up for the former, he allows himself to be tried for fraudulent bankruptcy only, without renouncing the benefit of the terms of the order of extradition, he cannot afterwards complain that the question of simple bankruptcy was not left to the jury.†

The other French decisions refer chiefly to the incompetence of the tribunals to consider the legality of the surrender which has been made. The doctrine was fully laid down in the case of Burgerey in 1841. He was given up by the Republic of Berne on a charge which did not come within the treaty. He appealed against his conviction, but the Cour de Cassation held that the two countries might have extended or modified the Convention by subsequent agreements, according to the requirements and obligations of the friendly relations which subsisted between them: that the French tribunals were not called upon to inquire into the reasons which had determined the Republic of Berne, the sole guardian of its own independence and dignity, to grant the extradition; and that whether it had been demanded or spontaneously accorded, the prisoner had been legally remitted to the jurisdiction of the law by which his crime was punishable.‡

* Legraverend, *Législ. Crim.*, i. 112; Blondel, *Monog. Alphabétique*, 33; and see the Lamirande case, *post*, p. celi.

† Le Sieur Pascal, *Dalloz, Jurisp. Gén.*, 1847, i. 202.

‡ *Dalloz, Jurisp. Gén.*, 1841, i. 440. And see the cases of L'Abbé Langé, *Dalloz, J. G.*, 1845, i. 223; Bastianesi, *ibid.*, 405;

The Cour d'Assises of the Seine also decided in 1846 ✓ (December 13) that as the right of extradition was inherent in every Government, and treaties only regulated this pre-existent right, it was not giving a retrospective operation to a treaty to try a fugitive surrendered under it for an offence committed before the treaty was concluded.*

Since the first edition of this work was published, three very important cases have come before the French courts. They were fully discussed and reported, and the decisions may be taken to have established the law in France with regard to the respective functions of the executive and judicial authorities in matters of extradition. Slightly the first in order of time was that of Lamirande, who was surrendered by Canada, or rather was kidnapped in Canada by the French police-officers, under the circumstances stated in a former chapter.† He was sent for trial before the Cour d'Assises de Vienne by the *chambre des mises en accusations* on charges of forgery, theft, and breach of trust. The Minister of Justice had addressed a letter to the *Procureur-Général* directing him to bring Lamirande to trial for forgery only, unless he voluntarily accepted the decision of the jury upon the other charges. The President of the Court informed the prisoner of this, and called upon him to

Cruveillé, Dalloz, J. G., 1847, i. 94; Viremaitre, J. G., 1851, v. 248; Dareau, J. G., 1853, v. 215; Chardon, J. G., 1865, i. 248.

* Davia, Dalloz, Jurisp. Gén., 1847, iv. 249.

† See *ante*, p. 113; and *post*, Appendix, p. cclii.

declare if he consented to be tried for theft and breach of trust. Lamirande refused to consent, but the Court nevertheless decided that he should be tried upon all the charges. It held that the fundamental principle of the separation of powers forbade the French tribunals to concern themselves with the interpretation or application of the acts of government by which the accused had been submitted to their jurisdiction; that by the mere fact of the sending an accused person for trial before his natural judges, the Government had guaranteed the regularity of his extradition, and that this decision, which was in the exclusive competence of the executive power, could not be the subject of any appeal to the courts, and further, that the letter of the Minister of Justice was simply one of instruction to the *Procureur-Général*, and could not in any way hinder the execution of a decree of the *chambre des mises en accusation*. Upon the day after this decision was given (December 4, 1866) Lamirande consented in case of his acquittal for forgery to be tried on the charge of theft, but the *Procureur-Général* appealed against the decree above stated, and the question was re-argued before the same court, which reversed its former decision, holding now that it was bound by the requisition of the Minister of Justice. This decree recited that it was a matter of principle that an accused should only be tried for the offence for which he was surrendered except with his express consent. Lamirande was accordingly tried for forgery only, and being convicted was sentenced to ten years' solitary con-

finement.* The other two cases occurred in the early part of 1867, and were very similar in the questions of law involved. One Renneçon, who had been a wine merchant at Avize (Marne) was claimed from Belgium, under the treaty of the 22nd November 1834, upon a charge of fraudulent bankruptcy. A regular demand was made by the French Government, but before it was finally completed he consented to be sent to France. The *Procureur-Impérial* of Epernay was informed by the Belgian authorities that the prisoner demanded to be given up without waiting for the completion of the preliminary legal forms, and he was accordingly given up at the frontier to the French gendarmes. Upon his examination by the *Juge d'Instruction* at Epernay, it was found that the charge of fraudulent bankruptcy could not be sustained, but he was sent for trial for the misdemeanour of simple bankruptcy. He objected before the Cour d'Assises that he ought only to be tried for the offence for which his extradition had been claimed, and the court adjourned the trial in order that a copy might be obtained

* Dalloz, *Jurisp. Gén.*, 1867, ii. 171. See also two very able articles by M. Ducrocq in the *Revue Critique*, t. 29, p. 481 (Dec. 1866), and t. 30, p. 1 (Jan. 1867). "Après les contestations de son avocat en date du 3 Décembre, Lamirande a accepté, le 4, le débat sur les faux, et en cas d'acquiescement même sur les vols, de sorte que son acquiescement nous aurait obligé à le garder, s'il eût été acquitté, et à le juger sur les accusations que le respect des Traités nous empêchait de soumettre au jury dès l'ouverture de la session." Letter of M. de Moustier, Lamirande Correspondence, 2, 84. See also Blondel, *Monog. Alfab. de l'Extradition*, 33, and *Rep. Gén.*, vii. 143.

of the demand to be given up which he had addressed to the Belgian Government. The document was supplied by the Belgian Minister of Justice, and on the 1st of February 1867, the Cour Impériale at Paris, having considered its terms, ordered that the prisoner should be reconducted to the frontier and there set at liberty. The *Procureur-Général* did not appeal in time against the decree, and it was accordingly carried into effect. But M. Baroche, the Minister of Justice, considered the case of so much importance that, although the prisoner had been set free, he ordered the *Procureur-Général* to apply to the Cour de Cassation to annul the decree of the Cour Impériale. In his despatch to the *Procureur-Général*, M. Baroche laid down in the most distinct terms the doctrine that the courts of law had nothing to do with the control or interpretation of proceedings in extradition, and referred fully to cases in support of this proposition.* All such questions were, he said, matters for the decision of the Government alone. The only discretion permitted to the courts was, that if the prisoner raised difficulties on which it appeared the Government had not been asked to decide, the trial might be postponed until such

* "Les questions qui peuvent soulever une extradition étant uniquement internationales un accusé n'a pas qualité pour invoquer dans un intérêt exclusivement personnel les vices prétendus d'une extradition, soit en la forme, soit au fond (Cruveillé, Dalloz, Jurisp. Gén., 1847, i. 94. Viremaître, Dalloz, J. G., 1851, v. 248. Dares, Dalloz, J. G., 1853, v. 215. Lamirande, Dalloz, J. G., 1867, ii. 171)." See the despatch in full in Dalloz, 1867, i. 281. See also the case of Quesson, Dalloz, J. G., 1867, i. 463.

decision had been given. He declared that the Court mistook the principles of extradition when it recognised on behalf of a fugitive a right arising from the treaty, the right of being tried only for a certain crime or misdemeanour. A criminal could acquire no right against the justice of his country; the tribunal had nothing to do but to try the facts; it could not take cognizance of the conditions upon which extradition had been granted except upon a notification from the Minister of Justice.*

And he quoted the case of Bastianesi, who was given up by a foreign state without any demand of extradition having been made. In this case the court postponed the trial, and the French Government made application to the foreign state, which ratified the surrender, and the prisoner was then tried.†

* It is notable with what emphatic distinctness the doctrine is laid down in the despatch. "Que l'appréciation et l'exécution des actes d'extradition tenant à l'interprétation des traités, rentrent dans le pouvoir du Gouvernement (Aff. Grandvaux), que les traités de l'extradition sont des actes de haute administration intervenus, entre deux puissances, et que ces puissances, et que ces puissances seules peuvent de concert expliquer ou interpréter; qu'il n'appartient en aucune manière à l'autorité judiciaire de s'immiscer dans ces explications ou interprétations (Affs. Vire-maire, Dareau), et que ces actes de haute administration échappent à tout contrôle de l'autorité judiciaire (Aff. Chardon). Enfin l'arrêt Dermenon (Dalloz, Jurisp. Gén., 1840, i. 438) défend aux tribunaux de décider si des actes d'une autorité étrangère constituent ou non une extradition virtuelle sans en référer à l'interprétation du Gouvernement."

† Bastianesi; Dalloz, J. G., 1845, i. 405; Blondel, Monog. Alfab., 8.

The Cour de Cassation accepted the doctrines laid down in this despatch, but in annulling the decree of the court below rested its judgment in great measure upon the special circumstances of the case. It stated as the grounds of the annulment, (1) that in case of a dispute between the public prosecutor and the accused as to whether the circumstances of his extradition implied a convention regulated by treaty between the two powers, there is ground for adjournment until the competent authority has decided the question. (2) That the court acts without authority if it decides that the giving up should involve the consequences of an extradition; especially if it founds its decision exclusively on documents coming from the foreign country. (3) That Renneçon, having consented to be sent to France before the completion of the formalities consequent upon a regular demand, could not complain of the non-observance of conditions applicable to cases of extradition; and (4) that the judge who holds an accused to be detained contrary to the provisions of the treaty cannot order him to be reconducted to the frontier, that right belonging to the executive power only.*

In the other case, that of Faure de Monginot, there was nothing in the special circumstances which rendered unnecessary a distinct decision of the main question. He was claimed from Belgium under the same treaty for complicity in fraudulent bankruptcy, and was regularly surrendered. It being found by the *chambre des mises*

* Aff. Renneçon; Dalloz, Jurisp. Gén., 1867, i. 281.

en accusation that there was no evidence against him upon the charge on which his surrender had been obtained, he was sent for trial before the *tribunal correctionnel de la Seine* for misdemeanour in embezzling and breach of trust.

Upon objection being made that the surrender had been granted for a different offence, the tribunal held that the stipulations of treaties were matters of international law, and decided that the accused should be taken to the frontier and set at liberty. On the 24th May 1867 the Cour Impériale de Paris affirmed this judgment; there being no question as to the facts. But the prisoner was not so fortunate as Renneçon, for the decision was not carried into effect. An appeal was lodged, and, acting on the doctrines laid down by M. Baroche in his despatch, the Court reversed its judgment on 25th July 1867.

In 1876 one Roth,* who was born in Alsace, and had chosen French nationality after the annexation of Alsace by Germany, being accused of *abus de confiance* committed in France, and having fled to Germany, was surrendered by the German Government, although the crime of *abus de confiance* was not one of those specified in the treaty. The Cour de Cassation dismissed his appeal against the *mandat d'arrêt* in virtue of which he was imprisoned, on the grounds that the right of extradition belongs to a government by reason of its sovereign power, and not by reason of any treaty it may have made with the demand-

* Dalloz, Jurisp. Gén., 1876, i. 512.

ing State; that such treaties, though binding as far as they extend, cannot be any obstacle to extradition for other crimes than those specified in them; that such acts of *haute administration* are not subject to the control of the judicial authorities, which are not concerned with the motives by which an extradition has been prompted; and that the person surrendered has no right of raising objections to the propriety of his surrender.

So in the case of Cyvoct,* surrendered by Belgium in 1883, the Cour de Cassation laid down that extradition treaties are matters of *haute administration* between the two powers, the interpretation of which is for the powers themselves; and that a prisoner surrendered to the justice of his country in virtue of an extradition treaty cannot raise any question as to the application of the treaty; and in the case of Breuil de Rays,† surrendered by Spain in the same year, the Cour de Cassation held that the French courts are not to consider the circumstances under which the power of surrender has been exercised; the mere fact of the surrender invests them with jurisdiction to try the prisoner for the offence in respect of which he has been surrendered.

The principle laid down in these cases has been attacked with great perseverance by counsel representing prisoners brought before the French tribunals after extradition from other countries, but it must now be considered firmly established. The result of the cases is that there is nothing in the French law to prevent the courts from

* Dalloz, Jurisp. Gén. 1884, i. 379.

† Ibid. 139.

trying a prisoner for crimes other than that for which his surrender has been granted,* and that he cannot raise before the French tribunals any objection to his surrender founded on the terms of the treaty under which his surrender appears to have been made. The Minister of Justice may interpose and re-deliver the accused to the state which has surrendered him if he is acquitted of the offence for which he was given up, but this interposition is a political, not a judicial act, and cannot be compelled by any process known to the French law.

* In arguing the *Lamirande* case, Doutre, Q.C., said :—" In 1855 Carpentier, Grelet, and Parot were obtained from the United States for a particular crime; none of them was ever tried in France for that crime; two were found guilty of another crime; one died in gaol, the other is still there undergoing his sentence."

CHAPTER VII.

RULES OF PRACTICE IN THE DIFFERENT COUNTRIES.

It may be useful to gather up in one chapter the various rules with regard to the practical proceedings on demands made upon each of the countries whose law upon this subject has been considered. Demands by Great Britain upon France are always made by the ambassador in Paris in the name of the English Government directly upon the French Government, and are supported by a warrant of arrest issued by a magistrate in England, and copies of the depositions upon which it was founded. These last, however, are not necessary, the French authorities being contented to deliver up the fugitive upon the production of the warrant of the arrest only. The papers are always taken to France by a police-officer able to speak to the identity of the accused.

A circular * issued by the Minister of Justice (Dufaure) under date 12th Oct. 1875, recites that there were considerable inconveniences in the practice pursued by the French authorities up to that date,

* *L'Extradition*, par F. J. Kirchner, 1883, pp. 635 *et seq.*

namely, that if the demand when transmitted by the Minister of Foreign Affairs to the Minister of Justice appeared to conform to the stipulations of the treaty, a decree was immediately prepared, submitted to the President for signature, and notified to the Minister of the Interior, who then ordered the necessary measures for carrying it into execution. This practice was defective in that it did not afford the Government the opportunity of hearing what the fugitive might have to say, nor even of verifying his identity before definitely deciding on the demand for his extradition. A new procedure* was created, therefore, to remedy these defects, under which no decree of extradition is to be submitted to the President for signature before the person claimed has been arrested. After his arrest, he is to be taken immediately before the procureur of the Republic of the arrondissement in which the arrest took place. The procureur is to examine the prisoner, and inquire into his identity and criminality; if the prisoner alleges that he is a French subject, or that the crime charged is not within the treaty, the procureur is to inquire into these matters. The procureur is to provide the prisoner with an interpreter or counsel if he desires them. After the examination, the procureur is to transmit to the Minister of Justice (1) the *mandat d'arrêt* or the *jugement de con-*

* See also note of 6th Dec. 1876 on the application of the circular; letter of 26th March 1877 from the Minister of Justice to the Minister of the Interior; official bulletins of 1877 and 1878 of the Minister of Justice; and circular of the Minister of Justice of 30th Dec. 1878, all of which are printed in Kirchner's *L'Extradition*.

damnation and the accompanying documents; (2) the examination; (3) the information collected by him; (4) his opinion, with the grounds of it. On consideration of these, the Minister of Justice will, if he sees fit, recommend the President to authorise the surrender. If the prisoner consents to be surrendered without formalities to the Government claiming him, his statement to that effect must be taken down in duplicate, and one copy sent to the administrative authority, which will hand him over to the authorities of the foreign country, and the other to the Minister of Justice.

In the case of criminals surrendered to France, an *arrêt de renvoi* is issued by the *chambre des mises en accusation*, directing the court within whose jurisdiction the offence was committed to bring the prisoner to trial. If this *arrêt* directs a trial upon a charge other than that for which he was surrendered, it is in the discretion of the Government to interfere and prevent the trial. Or the prisoner himself may appeal to the Cour de Cassation against the *arrêt*. The cases show, however, that the court will not upon this ground annul it.* If this appeal be not made, the trial takes place upon the charge named in the *arrêt de renvoi*, and no objection raised by the prisoner during its continuance, as to the legality of the surrender, is a reason for the postponement of judgment upon the facts which have been submitted to the jury. This judgment can only be suspended by the appeal just mentioned against the *arrêt de renvoi*. After trial and

* See *ante*, pp. 193-195.

sentence, an appeal lies to the Cour de Cassation. Upon the acquittal of the prisoner, or, if he be convicted, upon the expiration of his sentence, he is conducted to the frontier and there set at liberty.

The practice with respect to demands in extradition made upon Great Britain for the surrender of a person suspected of being in the United Kingdom is now regulated by the Extradition Act, 1870 (33 & 34 Vict., c. 52).^{*} The requisition must be made upon one of the principal Secretaries of State by some person recognised by him as a diplomatic representative of the foreign State (§ 7). This includes any person recognised as a Consul-General of the foreign State (Extradition Act, 1873—36 & 37 Vict., c. 60, § 7).[†] The demand need not be accompanied by any copies of depositions, or even of a warrant of arrest issued in the foreign State, but it is usual for the Secretary of State to require some *prima facie* evidence of guilt, or some proof of the conviction in the foreign State, to be laid before him. If he thinks the offence is not one of a political character, and that the surrender should be granted, he by order under his hand and seal signifies to the chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow Street (§ 26), that such requisition has been made, and requires him to issue his warrant for the apprehension of the fugitive criminal (§ 7).

Upon receiving such an order, and being furnished with such evidence as would in his opinion justify the

^{*} Appendix, p. iii.

[†] *Ibid.*, p. xxix.

issue of the warrant if the crime had been committed or the criminal convicted in England, the police magistrate issues a warrant for the apprehension of the fugitive (§ 8): also a police magistrate or any justice may issue a warrant without an order from a Secretary of State upon information or complaint and on such evidence as is above stated. The warrant of a police magistrate issued in pursuance of the Extradition Act may be executed in any part of the United Kingdom (§ 13. "Apprehension," in § 8, includes "detention," and a fugitive criminal who is already in custody may be detained for an offence within the Act, even though he was originally arrested without any warrant.* It has been intimated by Brett, J., that a policeman would be justified in arresting a man without a warrant on reasonable grounds of suspicion of his having done that which would be a felony if committed in this country.† The English warrant need not describe the offence with strict particularity. In one case, "the commission of crimes against bankruptcy law," ‡ and in another, "fraud by an agent," § was held a sufficient description.

When the fugitive is apprehended he is brought before the police magistrate, who hears the case in the same manner, and has the same jurisdiction and powers, as near

* *R. v. Weil*, 9 Q. B. D., 93; 51 L. J. Q. B., 419; 46 L. T. (N.S.) 592.

† *Ibid.*

‡ *Ex parte Terraz*, 4 Ex. D., 63; 42 L. J. Ex., 214; 39 L. T. (N.S.), 502; 27 W. R., 170.

§ *Ex parte Piot*, 48 L. T. (N.S.), 120; 15 Cox, C. C., 208; 47 J. P., 247.

as may be, as if the prisoner were charged with an indictable offence committed in England; but by a special clause in the Act it is provided that he shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused, or of which he is alleged to have been convicted, is an offence of a political character or is not an extradition crime (§ 9). The term "extradition crime" is defined (§ 26) to mean a crime which, if committed in England, or within English jurisdiction, would be one of the crimes described in the first schedule to the Extradition Act, 1870, now enlarged by the schedule to the Extradition Act, 1873. But the police magistrate must have before him the Order in Council by which the Act has been applied in the case of the foreign State by which the requisition has been made, as the Act itself is only operative so long as such Order remains in force, and subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the Order (§ 5). In the case of a fugitive alleged to have been convicted of an extradition crime, the police magistrate only requires proof of the conviction and of the identity of the person brought before him. This, however, only applies to persons who have been convicted after a trial of the ordinary kind, and have then made their escape; not to those condemned *par contumace*, erroneously rendered in the Act "convicted for contumacy;" these latter are included in the category of "accused persons" (§ 26).*

* See the case of Dubois (*alias* Coppin), *ante*, p. 154.

person, a duly authenticated foreign warrant authorising the arrest of the criminal must be produced (§ 10). It must purport to be signed by a judge, magistrate, or officer of the foreign State where the same was issued, and it must be authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State (§ 15). The foreign warrant need not set out the offence so as to strictly satisfy the English definition of some extradition crime, but it must appear that it has been issued by some competent authority, and that it is, in fact, an official document for the arrest of the prisoner.* In *R. v. Ganz*† the document produced before the magistrate as the foreign warrant was sealed with the seal of the Department of Justice at The Hague, but was headed "Copy." It was contended that § 10 of the Act of 1870 required the production of an original warrant, and that this document was insufficient as being a copy. It was also objected that it was not in form a warrant of arrest. The Court, however, held that what is required is the production, not of a warrant of a foreign State according to the technical meaning of the term "warrant" in English law, but of a document within the interpretation clause (§ 26), which provides that "the term 'warrant' in the case of any foreign State includes any judicial document authorising the arrest of a person accused or convicted of crime," and that the document

* *R. v. Jacobi and Hiller*, 46 L. T. (N.S.), 595 n.

† 9 Q. B. D., 93; 51 L. J. Q. B., 419; 46 L. T. (N.S.), 592.

in question was a judicial document authorising the arrest of the prisoner and was "duly authenticated" within § 5. In other cases, "fraud,"* and "suspected of fraud,"† have respectively been held to be sufficient descriptions of the offence in a foreign warrant. Evidence must of course be given of the identity of the prisoner with the person named in such warrant.

If, in addition to this, such evidence is produced as (subject to the provisions of the Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate is required to commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and must forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit (§ 10). To justify a magistrate in committing there must be some evidence that the accused committed the crime within the jurisdiction of the country seeking his extradition;‡ but if there is any evidence before the magistrate the Queen's Bench Division will not review his decision on the ground that it is against the weight of evidence.§ At the time of the committal the police magistrate must inform the criminal that he will not be surrendered until after the expiration

* *Ex parte Piot*, 48 L. T. (N.S.), 120; 15 Cox, C. C., 208; 47 J. P., 247.

† *R. v. Jacobi and Hiller*, 46 L. T. (N.S.), 595 n.

‡ *R. v. Lavandier*, 15 Cox, C. C., 329.

§ *R. v. Maurer*, *ante*, p. 170.

of fifteen days, and that he has a right to apply for a writ of habeas corpus (§ 11).

Application for a writ of habeas corpus on a warrant of extradition may be made to the court, or a judge, but may not during the sittings be made to a judge in chambers.* The present practice is for the argument to take place on the rule nisi for a habeas, and it seems that a further argument on the return to the writ will not be allowed in future. The following note is appended to *R. v. Ganz* (1882) in the *Law Reports*†:—"In *per* of fact, a rule absolute in the first instance for a writ of habeas corpus had been granted, and the writ issued. The prisoner was brought up in custody on the return, but the Attorney-General (Sir H. James), at the commencement of the argument, pointed out that the practice in matters of this sort had since 1873 been to obtain a rule nisi for a habeas corpus, and argue the case on the rule, and that such practice was far more convenient. He also stated that the points on which the prisoner's counsel wished to rely would not be available to him on the return to the writ, which was on the face of it perfectly good. It was therefore agreed that the matter should be argued as if the prisoner's counsel were now moving for a rule nisi on affidavits, and the Crown showing cause against such rule. It is reported accordingly." In *let* in *R. v. De Portugal*,‡ after an argument on the rule nisi by Sir J. Gorst, S.G. (with him Sir R. E. Webster,

* Crown Office Rules, 1886: 235-238. † 9 Q. B. D., 93.

‡ 34 W. R., 42.

A.G., and Messrs. R. S. Wright and Danckwerts) for the Crown, and Mr. Tickell for the prisoner, the Court (Mathew and A. L. Smith, JJ.) gave judgment in favour of the prisoner, and made the rule absolute for a writ of habeas corpus. On the return to the writ on the following day, Sir J. Gorst, S.G., opposed the discharge. Mr. Tickell, for the prisoner, objected that the case had already been argued, and referred to the above-quoted note to *R. v. Ganz*. Day, J. (the Court on this occasion consisted of Day and A. L. Smith, JJ.), said: "No doubt this is a departure from the ordinary practice, and it is, I think, most inconvenient, but there is nothing that I know of to prevent the Crown from showing cause against the discharge of the prisoner." The question whether the prisoner was entitled to be discharged was then re-argued by Sir J. Gorst, S.G., and Mr. R. S. Wright, for the Crown, and Mr. Tickell for the prisoner. In giving judgment, Day, J., made the following reference to the question of practice:—"I regret that I was not a member of the Court which gave judgment in this case yesterday, but I am now in entire possession of the grounds on which it was delivered. That Court heard a full argument from both sides. Now, on the application that the prisoner be discharged, further arguments have been addressed to us. I cannot help thinking that such a course is a matter of great public inconvenience. It would be very inconvenient if double arguments on the same question came to be allowed. The question raised here, if it was not raised in the former discussion, ought

most certainly to have been raised then. For myself I shall in future never allow an argument on the issue of a habeas corpus unless there be an undertaking that there is to be no further argument. The former practice was for the argument to take place on bringing the prisoner up for discharge, but at the instance of the former Attorney-General that course was changed, and the argument now takes place on the application for the writ of habeas corpus. I shall, however, take care that this inconvenience does not occur again." The Court Office Rules of 1886 provide* that upon the argument a rule nisi for a writ of habeas corpus the Court may in its discretion direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ, which order shall be a sufficient warrant to any gaoler or constable or other person for his discharge.

An appeal from the refusal of a Divisional Court to grant a habeas was made to the Court of Appeal in *K. Weil* † in 1882, but it did not become necessary for that Court to decide whether or not they had jurisdiction to entertain such an appeal, as in the case in question they thought that there was no ground for the exercise of their jurisdiction if they possessed any, and therefore they expressly refrained from expressing any opinion as to its existence. In the previous case of *Wideman* ‡ after the decision of the Queen's Bench against the prisoner, appli-

* Rule 244.

† 9 Q. B. D., 701; 53 L. J. M. C., 74; 47 L. T. (N.S.), 630; 31 W. R., 60; 15 Cox, C. C., 189.

‡ *Ante*, p. 152.

ation for a writ, which was virtually an appeal, was made to the Lord Chancellor. Upon the expiration of the fifteen days, or, if a writ of habeas corpus is obtained, upon the decision of the court remanding the prisoner, a Secretary of State may by warrant order the surrender to any person in his opinion duly authorised by the foreign State to receive the criminal ; but if he be not conveyed out of the United Kingdom within two months after the expiration of the fifteen days, or the decision of the court, any judge of one of the Superior Courts at Westminster may order his discharge, unless a Secretary of State, on having reasonable notice of the application, shall show sufficient cause to the contrary (§ 12). One of the chief defects in the law as it existed prior to 1870 was then remedied by Section 8 of the Act, which provides that a police magistrate,* or any justice of the peace, in any part of the United Kingdom, may issue a warrant of arrest without any previous order from a Secretary of State, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the criminal convicted in

* This term is by the interpretation clause of the Act (§ 26) limited to "a chief magistrate of the metropolitan police courts or one of the other magistrates of the metropolitan police court in Bow Street," so that the other police magistrates of the metropolis and the stipendiary magistrates in different parts of the country have no jurisdiction of any kind in matters of extradition, except when the crime is alleged to have been committed on the high seas. (§ 16.)

that part of the United Kingdom in which he exercises jurisdiction. The person issuing such warrant must forthwith send a report of the fact, together with the evidence and information or complaint, or certified copies thereof to a Secretary of State, who may, if he think fit, order the warrant to be cancelled and the person apprehended to be discharged. Any person arrested on such a warrant may be sent to London and brought before a police magistrate. If the magistrate shall not, within such reasonable time as, having reference to the circumstances of the case, he shall fix, receive an order from the Secretary of State signifying that a requisition has been made for the surrender of the person so arrested, he must discharge him; otherwise the case proceeds in the way just described. The evidence of criminality may consist wholly or in part of depositions, or copies of depositions, or certificates, which must be authenticated in the manner provided by the Act (§ 14). The depositions are admissible whether taken in the presence or absence of the accused, or whether taken in the particular charge or not. It is for the magistrate to give to them what weight he thinks proper.*

In Canada the practice is regulated by the Act of 1877 (40 Vict., c. 25), as amended in one respect by the Act of 1882 (45 Vict., c. 20). A judge of the Superior Courts or of the County Courts of any Province or Territory, or a commissioner in any Province or Territory authorised under the Great Seal to act judicially in extradition

* *Per Blackburn, J. : In re Counhaye*, L. R. 8 Q. B., 416.

matters (§ 8), may issue a warrant of apprehension on a foreign warrant of arrest, or on information or complaint, and on such evidence as would, in his opinion, justify the issue of the warrant if the crime had been committed in Canada, and he must forthwith report the issue of the warrant, together with the evidence, &c., to the Minister of Justice (§ 11). At the hearing, evidence of the charge may be given either orally or by original depositions or duly certified copies (§§ 9 and 12). On behalf of the prisoner, the judge must receive any evidence tendered to show that the alleged crime is an offence of a political character, or is for any other reason not an extradition crime, or that the proceedings are, in fact, being taken with a view to prosecute or punish him for an offence of a political character (§ 12). If the evidence would, according to the law of Canada, (1) in the case of a fugitive alleged to have been convicted of an extradition crime, prove that he was so convicted, or (2), in the case of a fugitive accused of an extradition crime, justify his committal for trial, the judge issues a warrant of committal (§ 13), and transmits to the Minister of Justice a certificate of the committal, with a copy of the evidence and such report on the case as he may think fit (§ 14). The Minister of Justice may then, upon the requisition of a foreign State, make the surrender (§ 18), or he may on certain grounds refuse it (§ 16, as amended by 40 Vict., c. 20). A fugitive surrendered to Canada in pursuance of any arrangement with a foreign State may not, in contravention of any term of the

arrangement, be tried in Canada for an offence other than that for which he is surrendered (§ 23).

In the United States a requisition for the surrender of a fugitive criminal, accompanied by *prima facie* evidence of guilt, may be made to the President by a foreign Government, and the President, acting through the Secretary of State, may thereupon issue a mandate to any justice of the Supreme Court, Circuit judge, District judge, any judge of a Court of Record of general jurisdiction of any State, or any commissioner authorised by a Court of the United States to act in extradition matters. The mandate states that the requisition has been made, and that it is desirable that the person claimed should be apprehended and the case inquired into. There have been conflicting decisions* as to the necessity of the Executive mandate, but on the whole it appears to be the better opinion that application for the arrest of an alleged fugitive may be made by a foreign Government to the Courts in the first instance and without any authority from the Executive department.† The Executive mandate is not mentioned either in the Ashburton Treaty or in the U. S. Revised Statutes.

To enable one of the judicial officers above mentioned to issue a warrant, he must have before him a complaint

* See the full account of the American practice given in ch. xviii of "The Law of Extradition," by Samuel T. Spear. Albany, 1884. 2nd edition.

† See *Calder's case*, 6 Op. Atty.-Gen., 91; also *Ex parte Ross*, 2 Bond, 252, and *In re Peter Kelley*, 2 Lowell, 339. The two latter cases were decided on the British Treaty.

made under oath, but the Statutes* do not require that it should be made by a person holding any particular position, diplomatic or otherwise, nor that a requisition should have been made by a foreign Government nor a foreign warrant of arrest issued.

On the hearing, evidence of identity and of criminality must be produced. The latter may consist of depositions, warrants, or other papers, or copies thereof if authenticated as required by the American Statutes.† If the depositions show that documents alleged to have been forged have been produced to the deponent, such documents need not be produced before the magistrate. Witnesses are to be examined on both sides, and in the State of New York the prisoner is entitled to give evidence on oath in his own defence.‡ If the magistrate deems the evidence sufficient to sustain the charge, he commits the prisoner to gaol, and certifies that fact, together with a copy of the proceedings before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of the foreign Government for his surrender. Should the evidence at first produced before the magistrate be informal or insufficient, the applying Government is entitled to have an adjournment for a time reasonably sufficient to enable it to remedy the defect. After an adjudication by the magistrate, a writ

* See U. S. Revised Statutes, § 5270.

† See U. S. Revised Statutes, 1874, § 5271, as amended by the Act of June 19, 1876 (19 U. S. Stat. at Large, 59), and the Act of Aug. 3, 1882 (22 U. S. Stat. at Large, 215), § 5.

‡ Sess. Laws of N. Y., 1869, c. 678.

of habeas corpus can only be obtained from the United States Court, the courts of the different States having no power to interfere in matters of extradition. Upon the return to the writ, the court will inquire into the competence and sufficiency of the evidence before the magistrate. If, however, it appears that he was duly authorized to hear the case, and that competent evidence was before him, the court will only set aside the commitment if there has been manifest error in the adjudication as to its sufficiency. And if the commitment be set aside, the prisoner may be remanded back to custody that a further examination may be held upon the original warrant of arrest. But, pending proceedings upon habeas corpus, the prisoner cannot be the subject of a second arrest upon an extradition warrant. All the proceedings are at the expense of the Government applying for the surrender,* and it is not necessary that they should be carried on or approved by the United States district attorney.† The rule requiring the surrender to be made within two months after final commitment is the same as in Great Britain.‡

The only important question which has arisen upon the rules of practice in England, the United States, and Canada relates to the evidence upon which the magistrate is to commit. It is necessary that the evidence shall be such as would justify a commitment for trial if the crime

* 7 Opinions of Atty.-Gen., 396, 612; 9, 497.

† *Ibid.*, 9, 246 (Black).

‡ A full statement of the rules of practice in the United States will be found in Spear on Extradition. Albany, 1884.

had been committed in the country upon which the demand is made. Upon this a question has been much discussed as to the duty of the magistrate to receive evidence for the prisoner.

In the minutes of a conference upon the subject of an amendment of the then existing treaty, held at Paris on February 8, 1866, the following paragraph occurs:—

“The question was then considered, how far the impression apparently entertained in France, that in a case of extradition the English magistrate actually tried the prisoner, was well founded; and it appeared that the impression was unfounded. The prisoner brought before a magistrate on an extradition warrant would be entitled, indeed, to deny his identity with the person named in the warrant, and would further be entitled to have read in his presence the depositions on which he was charged; but he would not be permitted to controvert the truth of the depositions, or to produce before the magistrate exculpatory evidence.” *

On the other hand, it was said in debate in the House of Commons by the Attorney-General (Sir Hugh Cairns), that as to an accused person being precluded from entering into any other defence than a denial of his identity, he differed entirely from that view, for he apprehended that it would be quite open to him to produce any evidence in his power to controvert the allegations made in the

* Correspondence respecting the Extradition Treaty with France, July 1866, p. 18.

depositions.* Neither of these conflicting propositions is exactly correct. It must be remembered that the magistrate, investigating a case of demanded extradition, is not quite in the same position as if he were deciding on a charge of crime committed within his own jurisdiction. In the latter case he has full discretion. He may, and often does, discharge a prisoner because, although there is *prima facie* evidence of guilt, the circumstances are so obscure, the intent so doubtful, the testimony so conflicting, that he thinks a jury would not be likely to convict. But in a case of extradition he cannot consider these matters. If he find sufficient evidence of guilt to justify a commitment, the question of a probability of a conviction is not one for his consideration. But it naturally follows from this that he should be strict in requiring proof of the criminality of the acts which are charged. In an ordinary case he can commit the prisoner upon bail, and leave difficult questions of law to be dealt with by the Court above. But in an extradition case he is to ascertain, not the commission of certain acts upon whose character another and higher tribunal may decide, but that there is sufficient evidence that the crime specified in a foreign warrant has by the prisoner been committed.

The words of the statutes are peculiar. "Such evidence as would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England." The language of the former statute was only slightly different.

* Speech in the House of Commons, 3rd August 1866.

“Such evidence as, according to the laws of that part of her Majesty’s dominions, would justify the apprehension and committal for trial of the person so accused if the crime of which he or she shall be so accused had been there committed.”

The question was raised in Anderson’s case whether the proviso, “according to the laws of that part of her Majesty’s dominions,” applied only to the nature and amount of evidence required, or extended to the nature of the crime,* and this has been much discussed in other cases noticed in the foregoing pages. To those cases the

* In Anderson’s case this question did not necessarily arise. The crime charged against him upon the facts stated was murder by the law of England as well as by that of the United States. The question whether the circumstances showed sufficient provocation to reduce it to manslaughter, was one for the jury, and one with which the Canadian courts had nothing to do. Nor had these courts any right to inquire into the justice or policy of the legislative enactment under which the arrest was attempted to be made. That was a matter for the consideration of the foreign country, and could not, however it was resolved, affect the nature of the crime. An illustration may be given in the English Act, 14 & 15 Vict., cap. 19, by which if three poachers are out together at night armed, any person is authorised to apprehend them. It is very probable that American judges would disapprove of that Act, as part of what they might consider an iniquitous system of game laws; but, so long as it remains upon the English Statute-book, a poacher killing a person so attempting to apprehend him would unquestionably be guilty of murder, and England would have an indisputable right to claim him under the treaty. So far as this question was decided in the case of Anderson, it was decided rightly. This was in the decision of the Queen’s Bench (Canada) in favour of the surrender, *ante*, p. 95. See also *Reg. v. Sattler*, 1 Dears and Bell, C. C., 525.

reader is referred for illustrations. It will suffice here to note the principles which apply to this subject.

It is clear, in the first place, that the proviso does relate to the nature and amount of evidence required. Thus, although by the English statute depositions may be received in lieu of oral testimony, the general English rules of evidence must be observed. Thus no hearsay evidence, no statements of the prisoner after threats or promises held out to him, could be received. Supposing sufficient unexceptionable evidence to be produced as to the facts, it cannot be the duty of the magistrate to receive evidence in contradiction on the part of the prisoner. However strong the contradiction might be, there would be a conflict of evidence on a matter of fact sufficient to go to a jury, and in that case the magistrate has no option but to commit.

This rule appears to govern the case of a denial of identity. That is a question of fact which could properly be submitted to a jury, and which is only decided by a magistrate in ordinary cases in the exercise of a discretion which he does not possess in matters of extradition. The American rules of practice are similar to those of England, and in Franz Müller's case the commissioner at New York refused to receive evidence of the *alibi* which was afterwards unsuccessfully attempted in England,* nor can there be any doubt of the propriety of his decision.

But the prosecution must produce sufficient evidence of criminality; that is, they must not only prove the com-

* See *ante*, p. 66.

mission of the acts described in the depositions, but also that they come within the definition of one of the crimes named in the Act under which proceedings are taken. It is equally well established that if on examination the magistrate finds that the acts are not disputed, but that a justification is established, antecedent to, and independent of, the acts themselves, he must discharge the prisoner. This is seen in the various cases previously cited where murder or robbery has been charged on account of acts committed as belligerents.* If the belligerent character, or any similar justification (such, for instance, in a case of forgery, as the authority to sign†), be established, the magistrate cannot commit the prisoner. In the case of the *Roanoke* at Bermuda, the prisoners were charged with piracy. They produced a commission from Jefferson Davis, the President of the Confederate States, and were immediately released; and upon complaint by the Government of the Northern States, the English Government upheld the decision of the magistrate.

There can be no doubt that the magistrate is bound to afford the prisoner a reasonable opportunity of producing this class of evidence. But it will be observed that this rule applies only to evidence as to the quality of the act charged; removing it altogether from the class of crimes by the operation of a rule of law, by showing that it had an antecedent justification. It is otherwise when it is

* See *ante*, pp. 101, 109.

† See *Reg. v. Gould*, 20 Upp. Can. C. P. (N.S. 6), 154; *ante*, p. 117.

desired by evidence as to the acts themselves to show a justification arising out of the circumstances, or to reduce the amount of guilt which is involved.

This question will arise most frequently upon charges of murder. In this case it is necessary to have *prima facie* evidence of a wilful killing. It may be that an antecedent justification may be shown of the class just noticed, and then the prisoner will be entitled to his release. But if not, the question upon the facts of the case whether the act charged is really murder, manslaughter, or homicide justified by the circumstances of the case, depends upon evidence of fact which is proper for the consideration of a jury, and upon which, therefore, the magistrate is not entitled to decide. If the prisoner be charged upon the foreign warrant with murder, and the evidence for the prosecution shows a *prima facie* case of wilful killing, it is not for the magistrate to decide how far provocation, terror, or accident affected the guilt of the act.*

At the same time, it would only be reasonable, considering that the deportation to another country for trial is in itself a severe penalty, that the magistrate should allow anything to appear upon the depositions which the prisoner's advisers might believe would be useful to him in an appeal to a higher Court against the commitment.

* This view of the limits of the duty of the committing magistrate was acted upon by Commr. C. W. Newton, of the Southern District of New York, in the case of John C. Bennett, 11 L. T. (N.S.), 489. See also Story on the Const. of the U. S., § 1812.

CHAPTER VIII.

CONCLUSION.

ALTHOUGH thirteen years have passed since the last edition of this book was published, I regret that the law still remains in the unsatisfactory state which I then described. The defects which I pointed out still exist, but fortunately they have not been productive of serious inconvenience. Many treaties have been made and several very important cases have been decided in the English Courts, and these will be found recorded in former chapters, but no legislative amendments have been made in our law.

In the year 1877 a Royal Commission was appointed to consider the working and effect of the existing law and treaties with respect to extradition. It was one of the strongest Commissions ever appointed, there being amongst its members the late Lord Chief Justice Cockburn, Lords Selborne, Blackburn, and Esher, Lords Justices Baggallay and Thesiger, Mr. Justice Stephen, and Mr. Russell Gurney. They suggested that, in future, extradition treaties should not be held to be indispensable, but that statutory power should be given to the proper authorities to deliver up fugitive criminals whose surrender should be asked, irrespective of the existence of any treaty between this

country and the state against whose law the offence had been committed, and that the Act should extend to those foreign states to which it might from time to time by Order in Council be directed to apply. They further expressed the opinion that the stipulation, that a fugitive criminal should not be surrendered if he was a subject of the state in which he was found, was unnecessary and inexpedient, and should be omitted in future treaties. This recommendation has been acted upon by the British Government in several of the treaties made since the date of the Report, notably those with Spain (1878), Luxemburg (1880), and Switzerland (1880). Several valuable suggestions were made by the Commission for the amendment of procedure in extradition cases, with a view to remove technical difficulties which under the present law often prevent the punishment of crime; but the most important point with which they dealt in their Report was the question how far the political character of a crime should exempt the offender from surrender. This is a matter of very great importance, and one which may at any time cause serious international difficulties. The Commission advised that the suggestion of a political motive should not be recognized as a ground on which a magistrate or a judge should refuse a demand for the surrender of a person accused of what, in the absence of such motive, would be an ordinary crime, unless the act to which a political character was sought to be ascribed occurred during a time of civil war or open insurrection but they considered that a discretionary power in favour

of the prisoner should be reserved for the Government to refuse to deliver up a person so accused. This exactly corresponds with the opinion expressed in the first edition of this work, which is quoted in the Appendix to the present edition.

It will be observed that, in considering how far a state was entitled, or should bind itself, to deliver up its own subjects for trial in a foreign country whose laws they were accused of having broken, the Commission made no reference to the question of the right of a state to imprison for offences against a foreign law, and to surrender for trial in a foreign state, persons not subjects of that state, but of a third state. This, however, is not an unimportant question, and it has become the more interesting from a decision lately given in our Courts. Before examining that decision it may be well to examine the principle upon which all extradition rests. That principle is, that a state, against whose laws a person subject to their obligation has committed an offence, is entitled to ask, as a matter of international courtesy, that the authorities of the place in which he has taken refuge shall assist in his being brought to justice, by surrendering him to the Executive of the country whose tribunals are entitled to punish the offence committed. If he be a subject of the power claiming his surrender, there is no difficulty. If he be a subject of the power upon which the request for his extradition is made, that power may or may not surrender him. It is quite entitled to take either course, but the comity of nations founded upon the general interests of mankind would

appear to require that his surrender should only be refused where sufficient opportunity exists of punishing him at the place where he has taken refuge. It must be admitted, however, that many treaties appear to be inconsistent with the principle last stated. The question of the right of one state to surrender to another a person who is not a subject of either, but of a third power, is more complicated, and it appears to me that such surrender cannot upon any sound principle be justified unless such third power consents or acquiesces. A Frenchman residing in Spain is subject to the municipal law of that country; that is a condition upon which he is allowed to come under and claim the protection of a Government to which he does not owe allegiance. For an offence committed against the municipal law of Spain, Spain can punish him; if for any reason the Government of Spain see fit to decline to allow him to remain under its protection, it can, subject to any question of treaty right, or claim for compensation, refuse to permit him to remain in its territory. But I see no principle upon which Spain, against whose municipal law he has committed no offence, is entitled to imprison him and hand him over as a prisoner to Russia without the consent of the Government of France, to which he owes allegiance, and from which he is entitled to receive protection. The existence of a treaty between Spain and Russia has nothing to do with the question. If, in the absence of such treaty, Spain could not rightfully make a surrender without violating the rights of France, a mere agreement to do so, to which France is no party, cannot entitle her to do so.

Our Courts have met the difficulty by holding that, *prima facie*, the fugitive might be considered the subject of the country within whose jurisdiction he is alleged to have committed an offence, and it cannot be doubted that this is a reasonable and convenient way of dealing with the question. But it must be observed that this assumption is based upon the fact that at the time the offence was committed the fugitive was within the territorial jurisdiction of the foreign country. A strange and very questionable decision which has lately been given in our Courts has, however, supported the right of surrender where no such assumption could be made. In the case of *R. v. Nillins** the person whose surrender was demanded was not alleged to have ever been within the territorial jurisdiction of the state against whose laws he was alleged to have offended. It was charged against him, that he, being in England, had uttered forged bills of exchange and procured goods by false pretences in Germany, and the Court decided that he was a fugitive criminal and must be surrendered. So long as this judgment remains uncorrected it must be accepted as the expression of the law, but it is to be hoped that the first opportunity will be taken of reversing it. The course which was pursued under it is clearly inconsistent with international rights. If France proposed to surrender to Spain, for trial for an offence against Spanish law, an Englishman who had never been in Spain, but for twenty years had resided in French territory, it would be the duty of the representative of this

* 53 L. J. M. C., 157. *Ante*, p. 175.

country to enter the most peremptory protest against a gross breach of international law. I believe the judgment to have been wholly erroneous, but, if it should be upheld, it would be desirable at once to amend the law in order to avoid the possibility of very serious political difficulty.

APPENDIX

APPENDIX.

EXTRADITION ACT (1870)

[33 & 34 VICT. c. 52.]

*An Act for amending the Law relating to the Extradition of
Criminals.* [9th August 1870.]

WHEREAS it is expedient to amend the law relating to the surrender to foreign States of persons accused or convicted of the commission of certain crimes within the jurisdiction of such States, and to the trial of criminals surrendered by foreign States to this country :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PRELIMINARY.

Short title.

1. This Act may be cited as "The Extradition Act, 1870."

*Where arrangement for surrender of criminals made, Order in
Council to apply Act.*

2. Where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive

criminals,* Her Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign State.

Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Every such Order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such Order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the "London Gazette."

Restrictions on surrender of criminals.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals:—

- (1.) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character:
- (2.) A fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be

* See the definition of "fugitive criminal" (§ 26), and *R. v. Nillins*, 53 L. J. M. C., 157.

detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded :

- (3.) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise :
- (4.) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

Provisions of arrangement for surrender.

4. An Order in Council for applying this Act in the case of any foreign State shall not be made unless the arrangement—

- (1.) Provides for the determination of it by either party to it after the expiration of a notice not exceeding one year ; and,
- (2.) Is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

Publication and effect of Order.

5. When an Order applying this Act in the case of any foreign State has been published in the "London Gazette," this Act (after the date specified in the Order, or if no date is specified, after the date of the publication) shall, so long as the Order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the Order, apply in the case of such foreign State. An Order in Council shall be conclusive evidence that the arrangement

therein referred to complies with the requisitions of this Act, and that this Act applies in the case of the foreign State mentioned in the Order, and the validity of such Order shall not be questioned in any legal proceedings whatever.

Liability of criminal to surrender.

6. Where this Act applies in the case of any foreign State, every fugitive criminal of that State* who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the Order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the Order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character.

7. A requisition for the surrender of a fugitive criminal of any foreign State, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign State. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

* Subject, of course, to any limitations or exceptions contained in the Treaty with that State, such as a provision that neither State is to surrender its own subjects. *R. v. Wilson*, 3 Q. B. D., 42; 48 L. J. M. C., 37; 37 L. T. (N.S.), 544; 26 W. R., 44.

Issue of warrant by police magistrate, justice, &c.

8. A warrant* for the apprehension† of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

- (1.) By a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and
- (2.) By a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may if he think fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this

* This warrant need not describe the offence with strict particularity. *Ex parte Terraz*, 4 Ex. D., 63; 42 L. J. Ex., 214; 39 L. T. (N.S.), 502; 27 W. R., 170. *Ex parte Piot*, 48 L. T. (N.S.), 120; 15 Cox, C. C., 208; 47 J. P., 247.

† "Apprehension" includes "detention," and a fugitive criminal who is already in custody may be detained for an offence coming within the Act, even though he was originally arrested without any warrant. *R. v. Weil*, 9 Q. B. D., 701; 53 L. J. M. C., 74; 47 L. T. (N.S.), 630; 81 W. R., 60; 15 Cox, C. C., 189.

section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

Hearing of case and evidence of political character of crime.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

Committal or discharge of prisoner.

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant* authorising the arrest of such criminal is duly authenticated† and such evidence is

* It is not necessary that the foreign warrant should set out the offence in terms that would strictly satisfy the English definition of some extradition crime; it is sufficient if it purports to be an official document, issued by a court of competent authority, ordering the arrest of the fugitive criminal, and if the evidence produced before the magistrate justifies committal for an extradition crime. *R. v. Jacobi*, 46 L. T. (N.S.), 595 n. *Ex parte Picot*, 48 L. T. (N.S.), 120; 15 Cox, C. C., 208; 47 J. P., 247.

† A document sealed with the seal of the Department of Justice at the Hague and purporting to be a copy of the record or minutes of a certain order or decree of the Criminal Court of Justice there, setting forth the charges against the fugitive criminal and authorising proceedings against him and his arrest, was held to satisfy the requirements of the section. *R. v. Ganz*, 9 Q. B. D., 93; 51 L. J. Q. B., 419; 46 L. T. (N.S.), 592.

produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison,* but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

Surrender of fugitive to foreign State by warrant of Secretary of State.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus.

Upon the expiration of the said fifteen days, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further

* To justify a magistrate in committing a prisoner under this section, there must be some evidence that the prisoner committed the extradition crime within the jurisdiction of the country seeking extradition. *R. v. Lavaudier and others*, 15 Cox, C. C., 329. But if there is any reasonable evidence before the magistrate, the Court will not review his decision on the ground that it is against the weight of the evidence. *R. v. Maurer*, 10 Q. B. D., 513; 52 L. J. M. C., 104; 31 W. R., 609.

period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign State from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign State the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

*Discharge of persons apprehended if not conveyed out of
United Kingdom within two months.*

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Execution of warrant of police magistrate.

13. The warrant of the police magistrate issued in pursuance of this Act may be executed in any part of the United

Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

Depositions to be evidence.

(6 & 7 Vict. c. 76.)

14. Depositions* or statements on oath, taken in a foreign State, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence of proceedings under this Act.

Authentication of depositions and warrants.

(29 & 30 Vict. c. 121.)

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:—

- (1.) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign State where the same was issued;
- (2.) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign State where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and

* It is not necessary that the depositions should have been taken in the presence of the accused or on the particular charge. *Re Elise Counhaye*, L. R., 8 Q. B., 410; 42 L. J. Q. B., 217; 28 L. T. (N.S.), 761; 21 W. R., 883.

- (3.) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign State where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the Minister of Justice, or some other Minister of State: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

CRIMES COMMITTED AT SEA.

Jurisdiction as to crimes committed at sea.

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect:—

- (1.) This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this Act, except the part relating to the execution of the warrant of the police magistrate:
- (2.) The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime:
- (3.) If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

FUGITIVE CRIMINALS IN BRITISH POSSESSIONS.

Proceedings as to fugitive criminals in British possessions.

17. This Act, when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications ; namely,

- (1.) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the Governor of that British possession by any person recognised by that Governor as a consul-general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign State on behalf of which the requisition is made) as the Governor of such colony or dependency :
- (2.) No warrant of a Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under this Act by the police magistrate* and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone :
- (3.) Any prison in the British possession may be substituted for a prison in Middlesex :
- (4.) A judge of any court exercising in the British possession the like powers as the Court of Queen's Bench

* A large number of colonial ordinances have been made providing for the vesting in, and for the exercise by, police magistrates in the colony of all powers vested in, and acts authorised or required to be done under this Act by, a police magistrate or justice in the United Kingdom, and these ordinances have been incorporated with the Act by Orders in Council made under § 18. See Index to London Gazette, Title—Extradition.

exercises in England may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

Saving of laws of British possessions.

18. If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign State, or by any subsequent Order, either

Suspend the operation* within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign State, and so long as such law or ordinance continues in force there, and no longer;

Or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

GENERAL PROVISIONS.

Criminal surrendered by foreign State not triable for previous crime.

19. Where, in pursuance of any arrangement with a foreign State, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign State, such person shall not, until he has been restored or had an opportunity of returning to such foreign State, be triable

* By Order in Council of December 28, 1882, made under this section, the operation of the Act in Canada is suspended during the continuance in force of the Canadian Acts of 1877 and 1882 (40 Vict. c. 25, and 45 Vict. c. 20).

or tried for any offence* committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

As to use of forms in second schedule.

20. The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

Revocation, &c., of Order in Council.

21. Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this Act, any Order in Council made in pursuance of this Act, and all the provisions of this Act with respect to the original Order shall (so far as applicable) apply, *mutatis mutandis*, to any such new Order.

Application of Act in Channel Islands and Isle of Man.

22. This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the Royal Courts of the Channel Islands are hereby respectively authorised and required to register this Act.

Saving for Indian treaties.

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor-General of India in Council to

* "Offence" is not limited to political offences, but includes all crimes triable in a criminal court. It does not, however, include disobedience to an Order of Court in a civil action punishable by attachment. *Pooley v. Whetham* (C.A.), 15 Ch. D., 435; 50 L. J. Ch., 236; 43 L. T. (N.S.), 267; 29 W. R. 296.

make treaties for the extradition of criminals with Indian States, or with other Asiatic States conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.

Power of foreign State to obtain evidence in United Kingdom.

24. The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign State in like manner as it may be obtained in relation to any civil matter under the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and thirteen, intituled "An Act to provide for taking evidence in Her Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals;" and all the provisions of that Act shall be construed as if the term "civil matter" included a criminal matter, and the term "cause" included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Foreign State includes dependencies.

25. For the purposes of this Act, every colony, dependency, and constituent part of a foreign State, and every vessel of that State, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign State

DEFINITION OF TERMS.

"British possession."

26. In this Act, unless the context otherwise requires,—
The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's

dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as hereinafter defined, are deemed to be one British possession :

“Legislature.”

The term “legislature” means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature, means the central legislature only :

“Governor.”

The term “Governor” means any person or persons administering the government of a British possession, and includes the Governor of any part of India :

“Extradition crime.”

The term “extradition crime” means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act :

“Conviction.”

The terms “conviction” and “convicted” do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term “accused person” includes a person so convicted for contumacy :

“Fugitive criminal.” “Fugitive criminal of a foreign State.”

The term “fugitive criminal” means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State who is in or is

suspected of being in some part of Her Majesty's dominions; and the term "fugitive criminal of a foreign State" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that State: *

"Secretary of State."

The term "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"Police magistrate."

The term "police magistrate" means a chief magistrate of the metropolitan police courts or one of the other magistrates of the metropolitan police court in Bow Street.

"Justice of the peace."

The term "justice of the peace" includes in Scotland any sheriff, sheriff substitute, or magistrate:

"Warrant."

The term "warrant," in the case of any foreign State, includes any judicial document authorising the arrest of a person accused or convicted of crime.

REPEAL OF ACTS.

Repeal of Acts in third schedule.

27. The Acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty's dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act), in the case of the foreign

* See *R. v. Nillins*, 53 L. J. M. C., 157.

States with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such Order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act.

Provided that if any proceedings for or in relation to the surrender of a fugitive criminal have been commenced under the said Acts previously to the repeal thereof, such proceedings may be completed, and the fugitive surrendered, in the same manner as if this Act had not passed.

Schedules.

FIRST SCHEDULE.

LIST OF CRIMES.

The following list of crimes is to be construed according to the law existing in England or in a British possession (as the case may be), of the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act:—

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force.

Rape.

Abduction.

Child-stealing.

Burglary and housebreaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

SECOND SCHEDULE.

Form of Order of Secretary of State to the Police Magistrate.

To the chief magistrate of the metropolitan police courts or other magistrate of the metropolitan police court in Bow Street [or the stipendiary magistrate at].

WHEREAS, in pursuance of an arrangement with referred to in an Order of Her Majesty in Council dated the day of , a requisition has been made to me, , one of Her Majesty's Principal Secretaries of State, by , the diplomatic representative of , for the surrender of , late of , accused [or convicted] of the commission of the crime of , within the jurisdiction of . Now I hereby, by this my order under my hand and seal, signify to you that such requisition

has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of The Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of

Her Majesty's Principal Secretaries of State, this

day of 18 .

Form of Warrant of Apprehension by Order of Secretary of State.

Metropolitan police district [or county or borough of to wit.	{	To all and each of the constables of the metropolitan police force [or of the county or borough of]
--	---	--

WHEREAS the Right Honourable ,
one of Her Majesty's Principal Secretaries of State, by order
under his hand and seal, hath signified to me that requisition
hath been duly made to him for the surrender of

, late of , accused [or con-
victed] of the commission of the crime of
within the jurisdiction of : This is there-

fore to command you in Her Majesty's name forthwith to
apprehend the said , pursuant to The
Extradition Act, 1870, wherever he may be found in the
United Kingdom or Isle of Man, and bring him before me or
some other [*magistrate sitting in this court], to show cause
why he should not be surrendered in pursuance of the said
Extradition Act, for which this shall be your warrant.

Given under my hand and seal at [*Bow Street, one of the
police courts of the metropolis] this

day of 18 .

J.P.

* Note.—Alter as required.

*Form of Warrant of Apprehension without Order of
Secretary of State.*

Metropolitan police { To all and each of the constables of the
district [or county
or borough of] metropolitan police force [or of the county
to wit.] or borough of].

WHEREAS it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [or the said county or borough of].
that late of is accused [or convicted]
of the commission of the crime of within the
jurisdiction of : This is therefore to command
you in Her Majesty's name forthwith to apprehend the said
and to bring him before me or some other
magistrate sitting at this court [or one of Her Majesty's
justices of the peace in and for the county [or borough] of
], to be further dealt with according to law.
for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the
police courts of the metropolis [or
in the county or borough aforesaid], this
day of 18 .

J.P.

*Form of Warrant for bringing Prisoner before the Police
Magistrate.*

County [or borough] { To constable of the police force of
of to wit.] and to all other police officers in
the said county [or borough] of .

WHEREAS late of accused [or
alleged to be convicted of] the commission of the crime of
within the jurisdiction of , has
been apprehended and brought before the undersigned, one of
Her Majesty's justices of the peace in and for the said county
[or borough] of ; And whereas by The Extradition

tion Act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow Street, within the metropolitan police district [*or* the stipendiary magistrate for

]: This is therefore to command you the said constable in Her Majesty's name forthwith to take and convey the said to the metropolitan police district [*or* the said], and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow Street within the said district [*or* before a stipendiary magistrate sitting in the said] to show cause why he should not be surrendered in pursuance of The Extradition Act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at in the
county [*or* borough] aforesaid, this day
of 18 .

J.P.

Form of Warrant of Committal.

Metropolitan police district [*or* the county *or* borough of] to wit, { To one of the constables of the metropolitan police force [*or* of the police force of the county *or* borough of], and to the keeper of the .

BE it remembered, that on this day of in the year of our Lord , late of is brought before me

the chief magistrate of the metropolitan police courts [*or* one of the police magistrates of the metropolis] sitting at the police a court in Bow Street, within the metropolitan police district [*or* stipendiary magistrate for], to show cause why he should not be surrendered in pursuance of The Extradition Act, 1870, on the ground of his being accused [*or* convicted] of the commission of the crime of within the jurisdiction of , and forasmuch as no

sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act :

This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said _____ into the custody of the said keeper of the _____ at _____, and you the said keeper to receive the said _____ into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the
police courts of the metropolis [*or at the said* _____]
this _____ day of _____ 18 ____ .
J.P.

Form of Warrant of Secretary of State for Surrender of Fugitive.

To the keeper of _____ and
to _____
WHEREAS _____ late of _____ accused
[*or convicted*] of the commission of the crime of _____
within the jurisdiction of _____, was delivered into the
custody of you _____ the keeper of _____ by
warrant dated _____ pursuant to The Extradition
Act, 1870 :

Now I do hereby, in pursuance of the said Act, order you the said keeper to deliver the body of the said _____ into the custody of the said _____, and I command you the said _____ to receive the said _____ into your custody, and to convey him within the jurisdiction of the said _____, and there place him in the custody of any person or persons appointed by the said _____ to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of
Her Majesty's Principal Secretaries of State, this
_____ day of _____ .

THIRD SCHEDULE.

Year and Chapter.	Title.
6 & 7 Vict. c. 75.	An Act for giving effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders.
6 & 7 Vict. c. 76.	An Act for giving effect to a Treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 & 9 Vict. c. 120.	An Act for facilitating execution of the Treaties with France and the United States of America for the apprehension of certain offenders.
25 & 26 Vict. c. 70.	An Act for giving effect to a Convention between Her Majesty and the King of Denmark for the mutual surrender of criminals.
29 & 30 Vict. c. 121.	An Act for the Amendment of the law relating to Treaties of Extradition.

EXTRADITION ACT (1873)

[36 & 37 VICT. c. 60].

An Act to amend The Extradition Act, 1870.

[5th August 1873.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Construction of Act and short title.

(33 & 34 Vict. c. 52.)

1. This Act shall be construed as one with The Extradition Act, 1870 (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as The Extradition Acts, 1870 and 1873, and this Act may be cited alone as The Extradition Act, 1873.

Explanation of sect. 6 of 33 & 34 Vict. c. 52.

2. Whereas by section six of the principal Act it is enacted as follows :

“ Where this Act applies in the case of any foreign State, every fugitive criminal of that State who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the Order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the Order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.”

And whereas doubts have arisen as to the application of the **said** section to crimes committed before the passing of the **principal** Act, and it is expedient to remove such doubts, it is **therefore** hereby declared that—

A crime committed before the date of the Order includes in the said section a crime committed before the passing of the principal Act, and the principal Act and this Act shall be construed accordingly.

Liability of accessories to be surrendered.

3. Whereas a person who is accessory before or after the **fact**, or counsels, procures, commands, aids, or abets the commission of any indictable offence, is by English law liable to be tried and punished as if he were the principal offender, but doubts have arisen whether such person as well as the principal offender can be surrendered under the principal Act, and it is expedient to remove such doubts; it is therefore hereby declared that—

Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime, or of being accessory before or after the fact to any extradition crime, shall be deemed for the purposes of the principal Act and this Act to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

Explanation of sect. 14 of 33 & 34 Vict. c. 52 as to statements on oath, including affirmations.

4. Be it declared, that the provisions of the principal Act relating to depositions and statements on oath taken in a foreign State, and copies of such original depositions and statements, do and shall extend to affirmations taken in a foreign State, and copies of such affirmations.

Power of taking evidence in United Kingdom for foreign criminal matters.

5. A Secretary of State may, by order under his hand and seal, require a police magistrate or a justice of the peace to take evidence for the purposes of any criminal matter pending in any court or tribunal in any foreign State; and the police magistrate or justice of the peace, upon the receipt of such order, shall take the evidence of every witness appearing before him for the purpose in like manner as if such witness appeared on a charge against some defendant for an indictable offence, and shall certify at the foot of the depositions so taken that such evidence was taken before him, and shall transmit the same to the Secretary of State; such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition.

Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents, in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence.

Every person who wilfully gives false evidence before a police magistrate or justice of the peace under this section shall be guilty of perjury.

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Explanation of sect. 16 of 33 & 34 Vict. c. 52.

6. The jurisdiction conferred by section sixteen of the principal Act on a stipendiary magistrate, and a sheriff or sheriff substitute, shall be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the police magistrate.

Explanation of diplomatic representative and consul.

7. For the purposes of the principal Act and this Act a diplomatic representative of a foreign State shall be deemed to include any person recognised by the Secretary of State as a consul-general of that State, and a consul or vice-consul shall be deemed to include any person recognised by the Governor of a British Possession as a consular officer of a Foreign State.

Addition to list of crimes in schedule.

8. The principal Act shall be construed as if there were included in the first schedule to that Act the list of crimes contained in the schedule to this Act.

SCHEDULE.

LIST OF CRIMES.

The following list of crimes is to be construed according to the law existing in England or in a British Possession (as the case may be) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act :

Kidnapping and false imprisonment.

Perjury, and subornation of perjury, whether under common or statute law.

(24 & 25 Vict. c. 96, &c.)

Any indictable offence under the Larceny Act, 1861, or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, "To consolidate and

amend the statute law of England and Ireland relating to malicious injuries to property," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, "To consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-nine, "To consolidate and amend the statute law of the United Kingdom against offences relating to the coin," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, "To consolidate and amend the statute law of England and Ireland relating to offences against the person," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the laws for the time being in force in relation to bankruptcy which is not included in the first schedule to the principal Act.

LIST OF THE EXISTING
EXTRADITION TREATIES, DECLARATIONS, AND
CONVENTIONS OF GREAT BRITAIN.

AUSTRIA-HUNGARY	.	Treaty of Dec. 3, 1873.
BELGIUM	.	Treaty of May 20, 1876,
"	.	Declaration of July 23, 1877,
"	.	and Declaration of April 21, 1887.
BRAZIL	.	Treaty of Nov. 13, 1872.
DENMARK	.	Treaty of March 31, 1873.
ECUADOR	.	Treaty of Sept. 20, 1880.
FRANCE	.	Treaty of Aug. 14, 1876.
GERMANY	.	Treaty of May 14, 1872.
GUATEMALA	.	Treaty of July 4, 1885.
HAYTI	.	Treaty of Dec. 7, 1874.
ITALY	.	Treaty of Feb. 5, 1873,
"	.	and Declaration of May 7, 1873.
LUXEMBOURG	.	Treaty of Nov. 24, 1880.
NETHERLANDS	.	Treaty of June 19, 1874.
RUSSIA	.	Treaty of Nov. 24, 1886.
SALVADOR	.	Treaty of June 23, 1881.
SPAIN	.	Treaty of June 4, 1878.
SWEDEN & NORWAY	.	Treaty of June 26, 1873.
SWITZERLAND	.	Treaty of Nov. 26, 1880.

TONGA *	.	.	.	Art. IV. of Treaty of Nov. 29, 1874.
„	.	.	.	and Protocol of July 3, 1882.
UNITED STATES	.	.	.	Art. X. of Treaty of Aug. 9, 1842.
URUGUAY	.	.	.	Treaty of March 26, 1884.

PORTUGAL (India only)	.	.	.	Art. XIX. of Treaty of Dec. 26, 1875.
„	.	.	.	and Convention of Jan. 29, 1880.

* Tongan subjects escaping to British territory.

AUSTRIA.

TREATY BETWEEN HER MAJESTY AND THE EMPEROR OF AUSTRIA
FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS.—
Signed at Vienna, December 3, 1873.

Ratifications exchanged at Vienna, March 10, 1874.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of Austria, King of Bohemia, &c., &c., &c., and Apostolic King of Hungary, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; Their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Andrew Buchanan, a member of Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath, Her Majesty's Ambassador Extraordinary and Plenipotentiary to His Imperial and Royal Apostolic Majesty:

And His Imperial and Royal Apostolic Majesty, the Count Julius Andrassy of Csik-Szent-Király and Kraszna Horka, His Imperial and Royal Majesty's Privy Councillor, Minister

* Extradition Acts applied by Order in Council from March 30, 1874.

of the Imperial House and of Foreign Affairs, Grand Cross of the Order of St. Stephen, &c. ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles :—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes for which the extradition is to be granted are the following :—

1. Murder, or attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery or counterfeiting, or altering or uttering what is forged or counterfeited or altered ; comprehending the crimes designated in the Austrian Penal Laws or in the Hungarian Penal Laws and Customs as counterfeiting or falsification of paper money, bank notes, or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.

The definition is to be determined accordingly with the Austrian Penal Laws if the extradition shall take place from Austria, and accordingly with the Hungarian Penal Laws and Customs if the extradition shall take place from Hungary.

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.

7. Crimes against bankruptcy law: comprehending the crimes considered as frauds committed by the bankrupt in connection with the bankruptcy, according with the Austrian Penal Laws if the extradition shall take place from Austria, and with the Hungarian Penal Laws if the extradition shall take place from Hungary.

8. Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company, made criminal by any law for the time being in force.

9. Rape.

10. Abduction.

11. Child stealing, kidnapping, and false imprisonment.

12. Burglary or housebreaking.

13. Arson.

14. Robbery with violence or with menaces.

15. Threats by letter or otherwise with intent to extort.

16. Sinking or destroying a vessel at sea, or attempting to do so.

17. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.

18. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.

19. Perjury or subornation of perjury.

20. Malicious injury to property, if the offence be indictable.

The extradition is also to take place for participation in any of the aforesaid crimes, as accessory either before or after the fact, provided such participation be punishable by the laws of both the Contracting Parties.

In all these cases the extradition will only take place from the Austro-Hungarian States when the crimes, if committed in Austria, would, according to Austrian law, constitute a

"Verbrechen," or, if committed in Hungary, would, according to the laws and customs being in force in Hungary, constitute a crime ("buntett"); the extradition from Great Britain only when the crimes, if committed in England, or within English jurisdiction, would constitute an extradition crime, as described in the Extradition Acts of 1870 and 1873.

ARTICLE III.

In no case and on no grounds whatever shall the High Contracting Parties be held to concede the extradition of their own subjects.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Austria-Hungary, has already been tried and discharged or punished, or is still under trial, in the Austro-Hungarian dominions, or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of Austria-Hungary, should be under examination for any other crime in the Austro-Hungarian dominions, or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution or any punishment awarded to him.

Should an individual whose extradition is demanded be at litigation, or be detained in the country on account of private obligations, his surrender shall nevertheless be made, the injured party retaining the right to prosecute his claims before the competent authority.

ARTICLE V.

The extradition shall not take place if, with respect to the crime for which it is demanded, and according to the laws of

the country applied to, criminal prosecution and punishment has lapsed.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

If an individual whose extradition is demanded by either of the High Contracting Parties, in accordance with the terms of this Treaty, be also claimed by one or several other Powers on account of other crimes committed on their territory, he shall be surrendered to the Government in whose territory his gravest crime was committed; and if his crimes are all of the same gravity, or a doubt exists as to which is the gravest, to the Government which first made application for his surrender.

ARTICLE VIII.

A surrendered person shall in no case be kept in arrest or subjected to examination in the State to which he has been surrendered on account of another previous crime, or any other grounds than those of his surrender, unless such person has, after his surrender, had an opportunity of returning to the country whence he was surrendered, and has not made use of this opportunity, or unless he, after having returned there, reappears in the country to which he has already been surrendered.

This stipulation does not refer to crimes committed after surrender.

ARTICLE IX.

Requisitions for surrender shall be made by the Diplomatic Agents of the High Contracting Parties.

To the requisition for the surrender of an accused person there must be attached a warrant issued by the competent authorities of the State which demands extradition, and such proofs as would, according to the laws of the place where the accused was found, justify his arrest if the crime had been committed there.

If the requisition refers to a person already convicted, the sentence passed by the competent Tribunal of State demanding his surrender must be produced.

No requisition for surrender can be based on a conviction in *contumaciam*.

ARTICLE X.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE XI.

A fugitive criminal may, however, in urgent cases be arrested under a warrant of a Police Magistrate, Judge of the Peace, or of any other competent authority in either country, on such information or complaint, or such evidence as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the prisoner convicted in the district in which the authority happens to be; provided, however, that he shall be discharged

if, within the shortest time possible, and at the utmost within fourteen days, a requisition for his surrender in accordance with the terms of Article IX. of this Treaty is not made by the Diplomatic Agent of the State which demands his extradition.

ARTICLE XII.

The extradition shall not take place before the expiration of fifteen days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

ARTICLE XIII.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or Officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XV.

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for extradition has ordered the delivery thereof, be given up when the extradition takes place; and this delivery shall extend not only to property of the accused, and to the stolen articles, but also to everything which may serve as a proof of the crime. If the extradition cannot be carried out in consequence of the flight or death of the individual who is claimed, the delivery of the above-mentioned objects shall take place nevertheless.

ARTICLE XVI.

Each of the Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons to be surrendered, in pursuance of this Treaty.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief Consular Officer of Austria-Hungary in such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Austro-Hungarian criminals, who may take refuge within such Colonies and foreign possessions, on the basis as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at Vienna as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Vienna, the 3rd day of December, in the year of Our Lord one thousand eight hundred and seventy-three.

(L.S.) ANDREW BUCHANAN.

(L.S.) ANDRASSY.

BELGIUM.

TREATY) BETWEEN HER MAJESTY AND THE KING OF THE
BELGIANS, FOR THE MUTUAL SURRENDER OF FUGITIVE
CRIMINALS.—*Signed at Brussels, May 20, 1876.*

Ratifications exchanged at Brussels, June 28, 1876.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Belgians, having judged it expedient, with a view to the more complete prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from the justice of their country, should, under certain circumstances, be reciprocally delivered up; Their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Savile Lumley, Esquire, Companion of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians;

And His Majesty the King of the Belgians, the Count d'Aspremont-Lynden, Officer of His Order of Leopold, Commander of the Order of the Ernestine Branch of the House of Saxony, Grand Cross of the Orders of Leopold of Austria, of the Legion of Honour, of the Lion of the Netherlands, and of the White Eagle of Russia, &c., &c., Member of the Senate, His Minister of Foreign Affairs;

* Extradition Acts applied by Order in Council from August 4, 1876.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles :—

ARTICLE I.

It is agreed that Her Britannic Majesty and His Majesty the King of the Belgians shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons, *[except as regards Great Britain, native born and naturalized subjects of Her Britannic Majesty, and, except as regards Belgium, those who are by birth or who may have become citizens of Belgium,] who being accused or convicted as principals or accessories, of any of the crimes hereinafter specified, committed within the territories of the requiring party, shall be found within the territories of the other party.

1. Murder (including assassination, parricide, infanticide, and poisoning), or attempt to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.

7. Crimes by bankrupts against bankruptcy law.

8. Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company, made criminal by any law for the time being in force.

9. Rape: Carnal knowledge of a girl under the age of ten years; carnal knowledge of a girl above the age of ten years

* See the Declaration of April 21, 1887, *post*, p. lvi.

and under the age of twelve years; indecent assault upon any female or any attempt to have carnal knowledge of a girl under twelve years of age.

10. Abduction.
11. Child stealing.
12. Kidnapping.
13. Burglary or housebreaking.
14. Arson.
15. Robbery with violence (including intimidation).
16. Threats by letter or otherwise with intent to extort.
17. Piracy by law of nations.
18. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
19. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
20. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.
21. Perjury and subornation of perjury.
22. Malicious injury to property, if the offence be indictable.
23. Aggravated or indecent assault.

Provided that the surrender shall be made only when in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

In no case can the surrender be made unless the crime shall be punishable according to the laws in force in both countries with regard to extradition.

ARTICLE II.

In the dominions of Her Britannic Majesty, other than the Colonies or Foreign Possessions of Her Majesty, the manner of proceeding shall be as follows :—

I. In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of the Belgians, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Belgium, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars that may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended he shall be brought before the Police Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England,

the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of His Majesty the King of the Belgians.

II. In the case of a person convicted—

The course of proceedings shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of the Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant.

ARTICLE III.

In the dominions of His Majesty the King of the Belgians other than the Colonies or Foreign Possessions of His said Majesty, the manner of proceeding shall be as follows:—

I. In the case of a person accused—

The requisition for surrender shall be made to the Minister

for Foreign Affairs of His Majesty the King of the Belgians by the Minister or other Diplomatic Agent of Her Britannic Majesty, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Great Britain, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts and containing a description of the person claimed, and any other particulars which may serve to identify him.

The Minister for Foreign Affairs shall transmit the warrant of arrest, with the documents thereto annexed, to the Minister of Justice, who shall forward the same to the proper judicial authority, in order that the warrant of arrest may be put in course of execution by the Chamber of the Council (*Chambre du Conseil*) of the Court of First Instance of the place of residence of the accused, or of the place where he may be found.

The foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under the same conditions. The application shall be submitted to the Chamber of the Council (*Chambre du Conseil*).

The Government will take the opinion of the Chamber of Indictments or Investigation (*Chambre des Mises en Accusation*) of the Court of Appeal, within whose jurisdiction the foreigner shall have been arrested.

The hearing of the case shall be public, unless the foreigner should demand that it should be with closed doors.

The public authorities and the foreigner shall be heard. The latter may obtain the assistance of Counsel.

Within a fortnight from the receipt of the documents, they shall be returned, with a reasoned opinion, to the Minister of Justice, who shall decide and may order that the accused be delivered to the person duly authorized on the part of the Government of Her Britannic Majesty.

II. In case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the conviction or sentence of condemnation issued in original or in an authenticated copy, to be transmitted by the Minister or other Diplomatic Agent in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced shall be such as would, according to the Belgian laws, prove that the prisoner was convicted of the crime charged.

ARTICLE IV.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in Belgium, if within fourteen days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II. and III. of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE V.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court upon the return to a writ of *habeas corpus* in the United Kingdom), he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE VI.

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII.

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the party upon which it is made to be a political offence, or to be an act connected with (*connexe à*) such an offence, or if he prove, to the satisfaction of the Police Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

ARTICLE VIII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting

Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath or solemn affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE IX.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge.

ARTICLE X.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date; unless any other arrangements should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE XI.

If the individual claimed should be under prosecution, or condemned by the Courts of the country where he has taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law,

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XII.

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

ARTICLE XIII.

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.

ARTICLE XIV.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign Possession of either

Party, shall be made to the Governor or Chief Authority of such Colony or Possession by the Chief Consular Officer of the other in such Colony or Possession; or, if the fugitive has escaped from a Colony or foreign Possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such Colony or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Belgian criminals who may there take refuge, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XV.

The present Treaty shall come into operation ten days after its publication in conformity with the laws of the respective countries.

After the Treaty shall so have been brought into operation, the Treaty concluded between the High Contracting Parties on the 31st July, 1872, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

ARTICLE XVI.

The present Treaty shall be ratified, and the Ratifications shall be exchanged at Brussels as soon as may be within six weeks from the date of signature.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Brussels, the twentieth day of May, in the year of Our Lord one thousand eight hundred and seventy-six.

(L.S.) J. SAVILE LUMLEY.

(L.S.) CTE. D'ASPREMONT-LYNDEN.

BELGIUM.

DECLARATION BETWEEN THE BRITISH AND BELGIAN GOVERNMENTS EXTENDING THE EXTRADITION TREATY OF MAY 20, 1876, TO CERTAIN ADDITIONAL CRIMES.—*Signed at London, July 23, 1877.**

THE Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Government of His Majesty the King of the Belgians, having judged it expedient, with the view to the more complete prevention of crime within their respective territories, that persons charged with or convicted of certain crimes in addition to those enumerated in Article I. of the Treaty between Great Britain and Belgium for the mutual surrender of fugitive criminals, of the 20th of May, 1876, shall, under the provisions of that Treaty, be reciprocally delivered up, have agreed as follows :—

Persons charged as principals or accessories with or convicted of the undermentioned crimes committed in the territories of the one Party and who shall be found within the territories of the other Party, shall be reciprocally delivered up to each other under the circumstances and conditions stated in the Treaty between Great Britain and Belgium for the mutual surrender of fugitive criminals, of the 20th of May, 1876 :—

1. Administering drugs or using instruments with intent to procure the miscarriage of women.
2. Bigamy.
3. Abandoning children, exposing or unlawfully detaining them.

* Extradition Acts applied by Order in Council from Aug. 27, 1877.

4. Any malicious act done with intent to endanger persons in a railway train.

5. Receiving any chattel, money, valuable security, or other property, knowing the same to have been embezzled, stolen, or feloniously obtained.

The provisions of the present Declaration shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties.

In witness whereof the undersigned have signed the present Declaration, and have affixed thereto the seals of their arms.

Done at London, in duplicate, the 23rd day of July, 1877.

(L.S.) DERBY.

(L S.) SOLVYNS.

BELGIUM.

DECLARATION BETWEEN THE BRITISH AND BELGIAN GOVERNMENTS FOR AMENDING ARTICLE I. OF THE EXTRADITION TREATY OF MAY 20, 1876.—*Signed at London, April 21, 1887.**

THE Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the Government of His Majesty the King of the Belgians, being desirous to provide for the more effectual repression of crimes and offences in their respective territories, have agreed as follows :—

ARTICLE I.

The words “except as regards Great Britain, native-born or naturalized subjects of Her Britannic Majesty, and except as regards Belgium, those who are by birth, or who may have become citizens of Belgium,” which occur in Article I. of the Extradition Treaty of the 20th May, 1876, are suppressed.

ARTICLE II.

The following paragraph is added to Article I. of the said Treaty :—

“In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization.”

* Extradition Acts applied by Order in Council from May 30, 1887.

ARTICLE III.

The present Declaration shall come into force ten days after its publication in the manner prescribed by law in the respective countries.

In witness whereof the undersigned have signed the same, and have affixed thereto the seal of their arms.

Done at London, the 21st day of April, 1887.

(L.S.) SALISBURY.

(L.S.) SOLVYNS.

BRAZIL.

TREATY BETWEEN HER MAJESTY AND THE EMPEROR OF BRAZIL
FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS.—
Signed at Rio de Janeiro, November 13, 1872.

Ratifications exchanged at Rio de Janeiro, August 28, 1873.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the Emperor of Brazil, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons accused, or convicted, of the crimes hereinafter enumerated, being fugitives from justice, should under certain circumstances be reciprocally delivered up, have resolved to name their Plenipotentiaries for the celebration of a Treaty for this purpose, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, George Buckley Mathew, Esquire, Companion of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of Brazil;

And His Majesty the Emperor of Brazil, the Marquis of S. Vicente, a Counsellor of State, Dignitary of the Order of the Rose, Senator and Grandee of the Empire;

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

* Extradition Acts applied by Order in Council from Dec. 1, 1873.

ARTICLE I.

The High Contracting Parties engage to deliver up, reciprocally, those persons who, being accused or convicted of having committed crime in the territory of the one Party, shall be found within the territory of the other, under the circumstances and conditions that are laid down in the present Treaty.

ARTICLE II.

The crimes for which the extradition shall be granted are the following :—

1. Murder, or attempt to murder.

2. Manslaughter.

3. Illegal fabrication, counterfeiting, or falsification, uttering or bringing into circulation counterfeit or falsified money.

4. Forgery, or imitation, counterfeiting or falsification, of any document or paper, comprising the crimes designated in the criminal code of Brazil as imitation, counterfeiting, or falsification of paper money, notes of banks, or other securities public or private, as well as the intentional use or the bringing into circulation of any papers imitated, counterfeited or falsified.

5. The purloining, or embezzlement, of moneys or effects, public or private, by abuse of confidence.

6. Frauds, or false or fraudulent pretences, to obtain moneys or effects from another.

7. Bankruptcies subject to criminal prosecution, according to the laws applicable thereunto.

8. Malversation, or fraud, committed by a bailee, banker, agent, factor, trustee, or director, or member, or officer, of any Company, made criminal by any law in force.

9. Rape, by force or threats.

10. Abduction.

11. Child-stealing.

12. Housebreaking, with intent to steal, or to commit other crimes.

13. Crimes resulting from the act of wilfully setting fire to a house, or to buildings connected therewith, to the prejudice of another.

14. Robbery with violence.

15. Piracy according to the law of nations.

16. Sinking or destroying a vessel on the high seas, or the attempt to perpetrate such acts.

17. Crimes arising from assault on board a ship on the high seas, with intent to cause death, or grievous bodily injuries.

18. Crimes arising from the revolt of two or more persons on board a ship on the high seas, against the authority of the captain.

19. Extradition will also take place for participation in any of the above-named crimes, provided that such participation shall be punishable by the laws of both the States of the High Contracting Powers.

ARTICLE III.

No British subject shall be delivered up by the Government or authorities of the United Kingdom to the Government or authorities of the Empire; and in like manner no Brazilian subject shall be delivered up by the Government or authorities of the Empire to the Government or authorities of the United Kingdom.

If, however, the person who has taken refuge in the territory of the other High Contracting Party shall have become naturalized there after the perpetration of the crime, such naturalization shall not be an obstacle to his extradition according to the stipulations of this Treaty.

ARTICLE IV.

The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, or if he is under trial, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial, and the fulfilment of the punishment, when such may have been awarded.

ARTICLE V.

The extradition shall also not take place if, after the perpetration of the crime, or the institution of the penal prosecution, or the conviction thereon, the refugee shall have acquired exemption from prosecution, or punishment, by lapse of time, according to the laws of the State appealed to.

ARTICLE VI.

The person claimed shall not be delivered up for crimes of a political character, and when he shall have been delivered up on other grounds he shall not be punished for anterior political crimes. He shall not, moreover, be delivered up if he can clearly prove that the requisition is made with the object of trying him, or of punishing him, for a political crime.

ARTICLE VII.

A person surrendered cannot be kept in prison, or brought to trial, in the State to which the surrender is made, for any other crime, or on account of any other matters, than those for which the extradition has been granted. This statement is not applicable to crimes committed after the extradition.

ARTICLE VIII.

If the person whose extradition is demanded by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective territories, the following rule shall be observed:

If he shall be a subject of the High Contracting Party who claims him, the surrender shall be made to it. If he be not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which in the case in question may appear to the former best entitled to the preference.

ARTICLE IX.

A requisition for extradition shall be made through the respective Diplomatic Agents of the High Contracting Powers.

When it relates to a person accused only, it must be accompanied by the warrant of arrest, issued by the competent authority of the State applying for it, and by such evidence as, according to the laws of the place where the accused is found, would justify the arrest if the crime was there committed.

If the extradition refers to a person already convicted, the application must be accompanied by a copy of the sentence of condemnation, passed against him, given by a competent Tribunal of the State making the requisition.

The requisition cannot, however, be founded on a sentence passed *in contumaciam*, that is to say, when the delinquent has not been personally cited to defend himself.

ARTICLE X.

If the requisition has been in conformity with the foregoing stipulations, the competent authorities of the State to which it

has been addressed shall proceed to the capture of the refugee. The prisoner shall be brought before a competent authority, who is to examine him and conduct the preliminary investigations of the case just as if the apprehension had taken place for crime committed in the same country.

ARTICLE XI.

The extradition shall in no case take place before the expiration of fifteen days counted from the apprehension, and after that delay it shall only be carried out when the evidence has been found sufficient according to the laws of the country applied to, either for subjecting the prisoner to trial if the crime had been there committed, or to prove the identity of the person convicted and condemned by the Tribunals of the State making the requisition.

ARTICLE XII.

In the examinations which are to be made in conformity with the foregoing stipulations, the authorities of the State to which application is made, shall admit as valid evidence the sworn depositions or declarations of witnesses, which were taken in the other State, or the respective copies thereof as well as the judicial documents, warrants, or sentences, transmitted therefrom, provided they are signed or certified by the hand of the judge, magistrate, or public officer of that State, and authenticated, either by the oath of some witness, or by the official seal of the Minister of Justice or some other Minister of State.

ARTICLE XIII.

If within two months counting from the date of arrest, sufficient evidence for the extradition shall not have been pre-

sented, the person arrested shall be set at liberty. He shall likewise be set at liberty if, within two months of the day on which he was placed at the disposal of the Diplomatic Agent, he shall not have been sent off to the reclaiming country.

ARTICLE XIV.

All the articles found in the possession of the person demanded, at the time of his apprehension, shall be seized in order to their delivery with him, when his extradition shall take place.

This delivery shall not be limited to effects or articles robbed, stolen, or obtained by other crimes, but shall extend to all that might serve as evidence of the crime: it shall be made even when the extradition could not be made after orders to that effect on account of the flight or death of the person claimed.

ARTICLE XV.

The High Contracting Parties renounce whatever claims they may have for the reimbursement of the expenses incurred for the apprehension and maintenance of the persons to be delivered up, and for their conveyance until they shall be placed on board ship, as they agree to defray these outgoings in their respective countries.

ARTICLE XVI.

The stipulations of the present Treaty shall apply to the Colonies and other Possessions of Her Britannic Majesty.

The requisition for the surrender shall be made to the Governor, or to the Chief Authority, in the Colony or Possession, by the highest Consular Agent of Brazil.

The surrender shall be made by the Governor or the Chief

Authority, who shall, however, have the power either to make it, or to refer the matter to his Government.

Both in the requisitions and in the surrender, the conditions established by the foregoing Articles of this Treaty shall be, as far as may be possible, adhered to.

As Her Britannic Majesty has the power to adopt special arrangements in the Colonies and Possessions, respecting the delivering up of delinquents, Her Majesty will facilitate the reclamations of Brazil in this respect, as far as may be possible, with due regard, however, to the provisions of this Treaty.

ARTICLE XVII.

The present Treaty shall come into force ten days after its publication, and in conformity with the forms prescribed by the laws of the countries of the High Contracting Parties. It will remain in force until one of these shall give notice for its termination, but it shall then remain in force for six months, counted from the day of this notification.

This treaty shall be ratified, and the ratifications exchanged in Rio de Janeiro, within three months or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the present Treaty, and have affixed thereto the seal of their arms.

Done at Rio de Janeiro, on the thirteenth day of the month of November, of the year of Our Lord Jesus Christ one thousand eight hundred and seventy-two.

(L.S.) GEORGE BUCKLEY MATHEW.

(L.S.) MARQUEZ DE S. VICENTE.

The undersigned, Plenipotentiaries of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland,

and of His Majesty the Emperor of Brazil, charged with making a Treaty for the extradition of criminals, upon which they have at this present agreed, having met in conference, took into their consideration the following subjects :—

They directed their attention to the fact that the criminal law of England punishes the crime of infanticide with the same penalty as that of murder, when accompanied by corresponding circumstances, and that it results therefrom that extradition should take place even for attempting to commit that crime.

On the other hand, they observed, that according to the Brazilian law, infanticide is not punished as murder, nor even as manslaughter, but as a crime distinct from both, and by a minor punishment, and that consequently extradition should not take place for the attempt.

They consequently resolved to declare that extradition shall solely take place for the crime of infanticide, and not for an attempt to commit that crime.

With this declaration they agreed to close this conference, from which the present Protocol emanates, which being found in conformity, was signed, each having a copy thereof.

Done in the City of Rio de Janeiro, the thirteenth day of November of 1872.

(L.S.) GEORGE BUCKLEY MATHEW.

(L.S.) MARQUEZ DE S. VICENTE.

DENMARK.

**TREATY BETWEEN HER MAJESTY AND THE KING OF DENMARK
FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS.—
*Signed at Copenhagen, March 31, 1873.***

Ratifications exchanged at Copenhagen, April 26, 1873.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Denmark, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; Their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Charles Lennox Wyke, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Denmark;

And His Majesty the King of Denmark, Baron Otto Ditlev Rosenörn-Lehn, Knight Commander of the Order of the Danebrog and Danebrogsmænd, His Majesty's Minister for Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

* Extradition Acts applied by Order in Council from July 7, 1873.

ARTICLE I.

It is agreed that Her Britannic Majesty and His Majesty the King of Denmark shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons, except native-born or naturalized subjects of the Party upon whom the requisition may be made who, being accused or convicted of any of the crimes hereinafter specified, committed within the territories of the requiring Party, shall be found within the territories of the other Party :

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, or counterfeiting, or altering, or uttering what is forged or counterfeited or altered.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes by bankrupts against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee or director, or member or public officer of any company made criminal by any law for the time being in force.
9. Rape.
10. Abduction.
11. Child-stealing.
12. Burglary or housebreaking.
13. Arson.
14. Robbery with violence.
15. Threats by letter or otherwise with intent to extort.
16. Piracy by law of nations.
17. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
18. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

19. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed ; and, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

ARTICLE II.

In the dominions of Her Britannic Majesty, other than the Colonies or foreign Possessions of Her Majesty, the manner of proceeding shall be as follows :—

1. In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of Denmark at London, accompanied by (1) a warrant or other equivalent judicial document for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in Denmark, (2) duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the acts on account of which the fugitive is demanded ; and (3) a description of the person claimed, and any other particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police

Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Police Magistrate who issued it, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of His Majesty the King of Denmark.

II. In the case of a person convicted—

The course of proceeding shall be the same as in the preceding case of a person accused, except that the document to be produced by the Minister or other Diplomatic Agent of His Danish Majesty in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*. If he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE III.

In the dominions of His Majesty the King of Denmark other than the Colonies or foreign Possessions of His said Majesty, the manner of proceeding shall be as follows :—

I. In the case of a person accused—

The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of Denmark by the Minister or other Diplomatic Agent of Her Britannic Majesty at Copenhagen, accompanied by (1) a warrant for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in Great Britain ; (2) duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the acts on account of which the fugitive is demanded ; and (3) a description of the person claimed, and any other particulars which may serve to identify him.

The Minister for Foreign Affairs of His Majesty the King of Denmark shall transmit such requisition for surrender to the Minister of Justice of His Majesty the King of Denmark, who, after having ascertained that the crime therein specified is one of those enumerated in the present Treaty, and satisfied

himself that the evidence produced is such as, according to Danish law, would justify the committal for trial of the individual demanded, if the crime had been committed in Denmark, shall take the necessary measures for causing the fugitive to be delivered to the person charged to receive him by the Government of Her Britannic Majesty.

II. In the case of a person convicted—

The course of proceeding shall be the same as in the preceding case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent of Her Britannic Majesty in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced shall be such as would, according to the laws of Denmark, prove that the prisoner was convicted of the crime charged.

ARTICLE IV.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted, in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London; and that in the dominions of His Majesty the King of Denmark, the case shall be immediately submitted to the Minister of Justice of His Majesty the King of Denmark; and provided, also, that the individual arrested shall in either country be discharged, if within fifteen days a

requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II. and III. of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board a vessel of either country, which may come into a port of the other.

ARTICLE V.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court, upon the return to a writ of *habeas corpus* in the United Kingdom), he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE VI.

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII.

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the Government upon which it is made to be one of a political character, or if in the United Kingdom he prove to the satisfaction of the Police Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of

State, or in Denmark, to the satisfaction of the Minister of Justice of His Majesty the King of Denmark, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.

ARTICLE VIII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, and provided they are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE IX.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused or convicted person shall have taken refuge.

ARTICLE X.

If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the

injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XI.

Every article found in the possession of the individual claimed at the time of his arrest, shall be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

ARTICLE XII.

Each of the two Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.

ARTICLE XIII.

The stipulations of the present Treaty shall be applicable to the Colonies or foreign Possessions of the two High Contracting Parties, in the following manner:—

The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign Possession of either of the two Contracting Parties, shall be made to the Governor or Chief Authority of such Colony or Possession by the Chief Consular Officer of the other Party in such Colony or Possession; or, if the fugitive has escaped from a Colony or foreign

Possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such Colony or Possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.

Her Britannic Majesty and His Majesty the King of Denmark shall, however, be at liberty to make special arrangements in their Colonies and foreign Possessions for the surrender of criminals who may take refuge therein, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XIV.

The present Treaty shall come into operation ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties.

After the Treaty shall so have been brought into operation, the Convention concluded between the High Contracting Parties on the 15th of April, 1862, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either Party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

ARTICLE XV.

The present Treaty shall be ratified, and the ratification shall be exchanged at Copenhagen as soon as may be within four weeks from the date of signature.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Copenhagen, the thirty-first day of March, in the year of Our Lord one thousand eight hundred and seventy-three.

(L.S.) CHARLES LENNOX WYKE.

(L.S.) O. D. ROSENÖRN-LEHN.

ECUADOR.

TREATY BETWEEN HER MAJESTY AND THE REPUBLIC OF THE
EQUATOR FOR THE MUTUAL SURRENDER OF FUGITIVE
CRIMINALS.—*Signed at Quito, September 20, 1880.*

Ratifications exchanged at Quito, February 19, 1886.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Excellency the President of the Republic of Ecuador, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes herein-after enumerated, and being fugitives from justice, should under certain circumstances be reciprocally delivered up; Her Britannic Majesty and the President of Ecuador have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Frederick Douglas Hamilton, Esquire, her Minister Resident at Ecuador;

And his Excellency the President of Ecuador, General Cornelio E. Vernaza, Minister of Foreign Affairs and of the Interior;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

* Extradition Acts applied by Order in Council from July 2, 1886.

ARTICLE I.

It is agreed that Her Britannic Majesty's Government and that of Ecuador shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally any persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party :—

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.
9. Rape.
10. Abduction.
11. Child stealing.
12. Burglary or housebreaking.
13. Arson.
14. Robbery with violence.
15. Threats by letter or otherwise with intent to extort.
16. Piracy by law of nations.
17. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
18. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
19. Revolt or conspiracy to revolt by two or more persons

on board a ship on the high seas against the authority of the captain or master.

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

ARTICLE II.

In the dominions of Her Britannic Majesty, other than the foreign or colonial possessions of Her Majesty, the manner of proceeding shall be as follows:—

1. In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by some person recognized by the Secretary of State as a Diplomatic Representative of the Republic of Ecuador, accompanied by a warrant or other equivalent judicial document for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in Ecuador, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there

be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Police Magistrate who issued it, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of Ecuador.

2. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the recognized Diplomatic Representative, in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Police Magistrate shall have committed the accused

or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*. If he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or to commit him to prison to await such order. A like proceeding shall be observed towards criminals in prison in Ecuador.

ARTICLE III.

In the Republic of Ecuador the manner of proceeding shall be as follows :—

1. In the case of a person accused—

The requisition for the surrender shall be made to the Minister for Foreign Affairs of Ecuador by the Minister or other Diplomatic Agent of Her Britannic Majesty, accompanied by a warrant for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the act charged against him in Great Britain, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said act, and a description of the person claimed, and any other particulars which may serve to identify him.

The said documents shall be transmitted to the Minister Secretary of State for the Interior Department, who shall then, by order under his hand and seal, signify to some Police Magistrate that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Minister Secretary of

State, and on the production of such evidence as would justify the issue of the warrant, if the crime had been committed in Ecuador, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant he shall be brought before the Police Magistrate who issued it, or some other authority of the same class. If the evidence to be then produced shall be such as to justify, according to the law of Ecuador, the committal for trial of the prisoner, if the crime of which he is accused had been committed in Ecuador, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of Her Majesty.

2. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Magistrate charged with the investigation of the case shall be such as would, according to the laws of Ecuador, prove that the prisoner was convicted of the crime charged.

ARTICLE IV.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate or other competent

authority in either country, on such information or complaint and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction : Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London, and that he shall be discharged, if within thirty days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II. and III. of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board any vessel of either country, which may come into any port of the other.

ARTICLE V.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal, or within two months after the decision of the Court, upon the return to a writ of *habeas corpus* in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE VI.

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored, or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII.

In any case where an individual convicted or accused in Ecuador of any of the crimes described in the present Treaty, and who shall have taken refuge in the United Kingdom, shall have obtained naturalization there, such naturalization shall not prevent the search for, arrest, and surrender of such individual to the Ecuatorian authorities, in conformity with the said Treaty.

In like manner the surrender shall take place on the part of Ecuador in any case where an individual accused or convicted in England of any of the same crimes who shall have taken refuge in Ecuador shall have obtained naturalization there.

ARTICLE VIII.

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the party upon whom it is made to be one of a political character, or if he prove to the satisfaction of the Police Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.

ARTICLE IX.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other if purporting to be

signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE X.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge.

ARTICLE XI.

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes committed upon their territory, his surrender shall, in preference, be granted in compliance with that demand which is earliest in date.

ARTICLE XII.

If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XIII.

Every article found in the possession of the individual claimed at the time of his arrest shall be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

ARTICLE XIV.

Each of the two Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.

ARTICLE XV.

The stipulations of the present Treaty shall be applicable to the foreign or colonial possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a foreign or colonial possession of either Party, shall be made to the Governor or chief authority of such possession by the Chief Consular Officer of the other at the seat of Government; or, if the fugitive has escaped from a foreign or colonial possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such possession.

Such requisitions may be disposed of, subject always as

nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Ecuatorian criminals who may take refuge within such Colony, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XVI.

The present Treaty shall come into operation two months after the exchange of the ratifications. Due notice shall in each country be given of the day.

Either Party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

ARTICLE XVII.

The present Treaty shall be ratified, and the ratifications shall be exchanged at the capital of Ecuador within eight months after the approbation of the Legislative Power according to the laws of each country.

In witness whereof the respective Plenipotentiaries have signed the same in duplicate, and have affixed thereto the seal of their arms.

Done at Quito, capital of the Republic of Ecuador, the 20th September, one thousand eight hundred and eighty.

(L.S.) FRE^c. DOUGLAS HAMILTON.

(L.S.) CORNELIO E. VERNAZA.

FRANCE.

TREATY BETWEEN HER MAJESTY AND THE PRESIDENT OF THE
FRENCH REPUBLIC FOR THE MUTUAL EXTRADITION OF
FUGITIVE CRIMINALS.—*Signed at Paris, August 14, 1876.*

Ratifications exchanged at Paris, April 8, 1878.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the French Republic, having recognized the insufficiency of the provisions of the Treaty concluded on the 13th of February, 1843, between Great Britain and France for the reciprocal extradition of criminals, have resolved, by common accord, to replace it by another and more complete Treaty, and have named as their respective Plenipotentiaries for this purpose, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Richard Bickerton Pemell Lord Lyons, a Peer of the United Kingdom of Great Britain and Ireland, Knight Grand Cross of the Most Honourable Order of the Bath, one of Her Britannic Majesty's Most Honourable Privy Council, and Her said Majesty's Ambassador Extraordinary and Plenipotentiary to the Government of the French Republic, &c., &c., &c. ;

And the President of the French Republic, M. le Duc Decazes, Member of the Chamber of Deputies, Minister of Foreign Affairs, Grand Officer of the National Order of the Legion of Honour, &c., &c., &c. ;

Who, after having communicated to each other their respective full powers (found in good and due form), have agreed upon the following Articles :—

* Extradition Acts applied by Order in Council from May 31, 1878.

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who are being proceeded against or who have been convicted of a crime committed in the territory of the one Party, and who shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

Native-born or naturalized subjects of either country are excepted from extradition. In the case, however, of a person who, since the commission of the crime or offence of which he is accused, or for which he has been convicted, has become naturalized in the country whence the surrender is sought, such naturalization shall not prevent the pursuit, arrest and extradition of such person, in conformity with the stipulations of the present Treaty.

ARTICLE III.

The crimes for which the extradition is to be granted are the following :—

1. Counterfeiting or altering money, and uttering counterfeit or altered money.
2. Forgery, counterfeiting or altering and uttering what is forged, counterfeited or altered.
3. Murder (including assassination, parricide, infanticide and poisoning) or attempt to murder.
4. Manslaughter.
5. Abortion.
6. Rape.
7. Indecent assault, acts of indecency even without violence upon the person of a girl under 12 years of age.

8. Child-stealing, including abandoning, exposing or unlawfully detaining.

9. Abduction.

10. Kidnapping and false imprisonment.

11. Bigamy.

12. Wounding or inflicting grievous bodily harm.

13. Assaulting a Magistrate, or peace or public officer.

14. Threats by letter or otherwise with intent to extort.

15. Perjury or subornation of perjury.

16. Arson.

17. Burglary or housebreaking, robbery with violence.

18. Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any Company made criminal by any Act for the time being in force.

19. Obtaining money, valuable security, or goods by false pretences, including receiving any chattel, money, valuable security, or other property, knowing the same to have been unlawfully obtained.

20. Embezzlement or larceny, including receiving any chattel, money, valuable security, or other property, knowing the same to have been embezzled or stolen.

21. Crimes against bankruptcy law.

22. Any malicious act done with intent to endanger persons in a railway train.

23. Malicious injury to property, if the offence is indictable.

24. Crimes committed at sea :—

(a) Any act of depredation or violence by the crew of a British or French vessel, against another British or French vessel, or by the crew of a foreign vessel not provided with a regular commission, against British or French vessels, their crews or their cargoes.

(b) The fact by any person being or not one of the crew of a vessel of giving her over to pirates.

(c) The fact by any person being or not one of the crew of

a vessel of taking possession of such vessel by fraud or violence.

(d) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(e) Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

25. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation, either as principals or accessories, in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE IV.

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted.

ARTICLE V.

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the Party upon which it is made to be a political offence, or to be an act connected with (*connexe à*) such an offence, or if he prove to the satisfaction of the Police Magistrate or of the Court before which he is brought on *habeas corpus*, or of the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of political character.

ARTICLE VI.

On the part of the French Government, the extradition shall take place in the following manner in France :—

The Ambassador or other Diplomatic Agent of Her Britannic Majesty in France shall send to the Minister for Foreign Affairs, in support of each demand for extradition, an authenticated and duly legalized copy either of a certificate of conviction, or of a warrant of arrest against a person accused, clearly setting forth the nature of the crime or offence on account of which the fugitive is being proceeded against. The judicial document thus produced shall be accompanied by a description of the person claimed, and by any other information which may serve to identify him.

These documents shall be communicated by the Minister for Foreign Affairs to the Keeper of the Seals, Minister of Justice, who, after examining the claim for surrender, and the documents in support thereof, shall report thereon immediately to the President of the Republic; and, if there is reason for it, a Decree of the President will grant the extradition of the person claimed, and will order him to be arrested and delivered to the British authorities.

In consequence of this Decree, the Minister of the Interior shall give orders that search be made for the fugitive criminal, and in case of his arrest, that he be conducted to the French frontier, to be delivered to the person authorized by Her Britannic Majesty's Government to receive him.

Should it so happen that the documents furnished by the British Government, with the view of establishing the identity of the fugitive criminal, and that the particulars collected by the agents of the French Police with the same view, be considered insufficient, notice shall be immediately given to the Ambassador or other Diplomatic Agent of Her Britannic Majesty in France, and the fugitive person, if he has been

arrested, shall remain in custody until the British Government has been able to furnish further evidence in order to establish his identity or to throw light on other difficulties in the examination.

ARTICLE VII.

In the dominions of Her Britannic Majesty, other than the Colonies or Foreign Possessions of Her Majesty, the manner of proceeding shall be as follows :—

(A) In the case of a person accused—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Ambassador or other Diplomatic Agent of the President of the French Republic, accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in France, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended, he shall be brought before the Police Magistrate who issued the warrant.

or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the President of the French Republic.

(B) In the case of a person convicted—The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Ambassador or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

(C) Persons convicted by judgment in default or *arrêt de contumace* shall be in the matter of extradition considered as persons accused, and, as such, be surrendered.

(D) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the

person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE VIII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the facts of conviction, shall be received in evidence in proceedings in the dominions of the other if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken: provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

ARTICLE IX.

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which the Magistrate exercises jurisdiction: provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in France, if within fourteen days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country in the manner directed by Articles II. and IV. of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE X.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal, or within two months after the decision of the Court upon the return to a writ of *habeas corpus* in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE XI.

The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of that country.

ARTICLE XII.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrenders shall be granted to that State whose demand is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account

of the gravity of the crimes committed, or for any other reasons,

ARTICLE XIII.

If the individual claimed should be under prosecution, or condemned for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall nevertheless take place.

ARTICLE XIV.

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent party so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime, and shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

ARTICLE XV.

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the

letention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present Treaty.

ARTICLE XVI.

In the Colonies and foreign Possessions of the two High Contracting Parties the manner of proceeding shall be as follows:—

The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign Possession of either Party, shall be made to the Governor or chief authority of such Colony or Possession by the chief Consular Officer of the other in such Colony or Possession; or, if the fugitive has escaped from a Colony or foreign Possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such Colony or Possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

The foregoing stipulations shall not in any way affect the arrangements established in the East Indian Possessions of the two countries by the IXth Article of the Treaty of the 7th March, 1815.

ARTICLE XVII.

The present Treaty shall be ratified, and the ratifications shall be exchanged at Paris as soon as possible.

It shall come into operation ten days after its publication, in conformity with the laws of the respective countries.

Either Party may at any time terminate the Treaty by giving to the other six months' notice of its intention.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, this fourteenth day of August, one thousand eight hundred and seventy-six.

(L.S.) LYONS

(L.S.) DECAZES.

GERMANY.

TREATY BETWEEN HER MAJESTY AND THE EMPEROR OF
GERMANY FOR THE MUTUAL SURRENDER OF FUGITIVE
CRIMINALS.—*Signed at London, May 14, 1872.*

Ratifications exchanged at London, June 11, 1872.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of Germany, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Granville George Earl Granville, Lord Leveson, a Peer of the United Kingdom, Knight of the Most Noble Order of the Garter, a Member of Her Majesty's Privy Council, Lord Warden of the Cinque Ports and Constable of Dover Castle, Chancellor of the University of London, Her Majesty's Principal Secretary of State for Foreign Affairs;

And His Majesty the Emperor of Germany, His Minister of State and Chamberlain, Albert Count of Bernstorff-Stintenburg, Knight of the exalted Order of the Black Eagle, Grand

* Extradition Acts applied by Order in Council from July 8, 1872.

Cross of the Order of the Red Eagle with oak leaves, Grand Commander of the Order of the Imperial and Royal House of Hohenzollern in diamonds, and Knight of the Order of the Crown with the Red Cross; Grand Cross of the Order of Civil Merit of the Crown of Bavaria, and of the Order of the Ernestine Branch of the House of Saxony, Knight of the Order of the Golden Lion of the House of Nassau, &c., &c., &c., Ambassador Extraordinary and Plenipotentiary of His Imperial and Royal Majesty to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes for which the extradition is to be granted are the following:—

- (1.) Murder, or attempt to murder.
- (2.) Manslaughter.
- (3.) Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
- (4.) Forgery or counterfeiting, or altering or uttering what is forged or counterfeited or altered; comprehending the crimes designated in the German Penal Code as counterfeiting or falsification of paper-money, bank notes, or other securities, forgery or

falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged or falsified papers.

- (5.) Embezzlement or larceny.
- (6.) Obtaining money or goods by false pretences.
- (7.) Crimes by bankrupts against bankruptcy law ; comprehending the crimes designated in the German Penal Code as bankruptcy liable to prosecution.
- (8.) Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.
- (9.) Rape.
- (10.) Abduction.
- (11.) Child-stealing.
- (12.) Burglary or housebreaking.
- (13.) Arson.
- (14.) Robbery with violence.
- (15.) Threats by letter, or otherwise, with intent to extort.
- (16.) Sinking or destroying a vessel at sea, or attempting to do so.
- (17.) Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.
- (18.) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III.

No German shall be delivered up by any of the Governments of the Empire to the Government of the United Kingdom ; and

no subject of the United Kingdom shall be delivered up by the Government thereof to any German Government.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of any of the Governments of the German Empire, has already been tried and discharged or punished, or is still under trial, in one of the States of the German Empire, or in the United Kingdom, respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of any of the Governments of the German Empire, should be under examination for any other crime in one of the States of the German Empire, or in the United Kingdom, respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties, respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded on sentences passed in *contumaciam*.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary

investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X.

The extradition shall not take place before the expiration of fifteen days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

ARTICLE XI.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed by the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XII.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XIII.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the

competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XIV.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XV.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or Chief Authority of such Colony or possession by the Chief Consular Officer of the German Empire in such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or Chief Authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of German criminals, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVI.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at London in four weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the fourteenth day of May, in the year of our Lord One Thousand eight hundred and seventy-two.

(L.S.) GRANVILLE.

(L.S.) BERNSTORFF.

Protocol.

The undersigned Plenipotentiaries of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and of His Majesty the Emperor of Germany, in proceeding this day to the signature of the Treaty concluded between their said Majesties for the mutual surrender of fugitive criminals, have agreed that the Convention for the same purpose which was

signed between Her Britannic Majesty and His Majesty the **King** of Prussia, on the 5th of March, 1864, shall be cancelled from and after the day on which the Treaty signed this day shall come into operation, after having been ratified by the **High Contracting Parties.**

London, the 14th of May, 1872.

GRANVILLE.

BERNSTORFF.

GUATEMALA.

TREATY BETWEEN HER MAJESTY AND THE PRESIDENT OF THE
REPUBLIC OF GUATEMALA FOR THE MUTUAL EXTRADITION
OF FUGITIVE CRIMINALS.—*Signed at Guatemala, July 4*
1885.

Ratifications exchanged at Guatemala, September 6, 1886.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Excellency the President of the Republic of Guatemala, having judged it expedient, with view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have named as their Plenipotentiaries to conclude a Treaty (that is to say):

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, James Plaister Harriss-Gastrell, Esquire, Her Britannic Majesty's Minister Resident and Consul-General to the Republic of Guatemala;

And his Excellency the President of the Republic of Guatemala, his Excellency Señor Don Manuel J. Dardon, Secretary of State for Foreign Affairs of the Republic of Guatemala;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

* Extradition Acts applied by Order in Council from Dec. 13, 1886.

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II., committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II.

The extradition shall be reciprocally granted for the following crimes or offences :—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt to murder.

2. Manslaughter.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.

4. Rape.

5. Aggravated or indecent assault ; carnal knowledge of a girl under the age of 10 years ; carnal knowledge of a girl above the age of 10 years and under the age of 12 years ; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.

6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.

7. Abduction of minors.

8. Bigamy.

9. Wounding, or inflicting grievous bodily harm.

10. Assaulting a Magistrate, or peace or public officer.

11. Threats, by letter or otherwise, with intent to extort money or other things of value.

12. Perjury or subornation of perjury.

13. Arson.

14. Burglary or housebreaking, robbery with violence, larceny, or embezzlement.

15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.

16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

17 (a.) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b.) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered.

(c.) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm or national coin.

18. Crimes against bankruptcy law.

19. Any malicious act done with intent to endanger persons in a railway train.

20. Malicious injury to property, if such offence be indictable.

21. Crimes committed at sea.

(a.) Piracy, by the law of nations.

(b.) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(c.) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

(d.) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

22. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact.

provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

No Guatemalan shall be delivered up by the Government of Guatemala to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Guatemala.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Guatemala, has already been tried and discharged or punished, or is still under trial in the territory of Guatemala or in the United Kingdom respectively for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or on the part of the Government of Guatemala, should be under examination for any other crime in the territory of Guatemala or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters than those for which the extradition shall have taken place. This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded solely on sentences passed *in contumaciam*, but persons convicted for contumacy shall be deemed to be accused persons.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X.

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Guatemala as in the United Kingdom, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, and to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and the criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State or copies thereof, and likewise the warrants and sentences issued therein, provided such documents purport to be signed or certified by a Judge, Magistrate, or Officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XIII.

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should have

been made between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within three months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or Chief Authority of such Colony or Possession by the Chief Consular Officer of the Republic of Guatemala in such Colony or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or Chief Authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Guatemalan criminals who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign Possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVII.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty, after receiving the approval of the Congress of Guatemala, shall be ratified, and the ratification shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Guatemala, the fourth day of July, in the year of Our Lord one thousand eight hundred and eighty-five.

(L.S.) J. P. HARRISS-GASTRELL.

(L.S.) M. J. DARDON.

HAYTI.

TREATY BETWEEN HER MAJESTY AND THE PRESIDENT OF THE
REPUBLIC OF HAYTI FOR THE MUTUAL SURRENDER OF
FUGITIVE CRIMINALS.—*Signed at Port-au-Prince, Decem-
ber 7, 1874.*

Ratifications exchanged at Port-au-Prince, September 2, 1875.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Excellency the President of the Republic of Hayti, having judged it expedient, with a view to a better administration of justice, and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up ;

Her Britannic Majesty and the President of Hayti have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Spenser St. John, Esq., Minister-Resident and Consul-General of Her Britannic Majesty in the Republic of Hayti and her Chargé d'Affaires in the Dominican Republic ;

And His Excellency the President of the Republic of Hayti, M. Surville Toussaint, ex-Senator ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles :—

* Extradition Acts applied by Order in Council from Feb. 21, 1876.

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes for which the extradition is to be granted are the following:—

1. Murder, or attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery, or counterfeiting, or altering, or uttering what is forged or counterfeited or altered.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Malicious injury to property, if the offence be indictable.
8. Crimes against bankruptcy law.
9. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.
10. Perjury or subornation of perjury.
11. Rape.
12. Abduction.
13. Child-stealing.
14. False imprisonment.
15. Burglary or housebreaking.
16. Arson.
17. Robbery with violence.
18. Threats, by letter or otherwise, with intent to extort.

19. Piracy by law of nations.

20. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

21. Assaults on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

22. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III.

No Haytian shall be delivered up by the Government of Hayti to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Hayti.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of the Republic of Hayti, has already been tried and discharged, or punished, or is still under trial in Hayti or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of the Republic of Hayti, should be under examination for any other crime in Hayti or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place

where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X.

The extradition shall not take place before the expiration of fifteen days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

ARTICLE XI.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn

depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witnesses, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

ARTICLE XII.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XIII.

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything which may serve as a proof of the crime.

ARTICLE XIV.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XV.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or Chief Authority of such Colony or Possession by the chief Consular Officer of Hayti in such Colony or Possession.

Such requisitions may be disposed of, subject always, and as nearly as may be, to the provisions of this Treaty, by the Governor or Chief Authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to the Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Haytian criminals, who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign Possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVI.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The President of the Republic of Hayti engages to apply to the Senate for the necessary authorization to give effect to the present Treaty, immediately after its meeting.

The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Port-au-Prince, the seventh day of December, in the year of our Lord one thousand eight hundred and seventy-four.

(L.S.) SPENSER ST. JOHN.

(L.S.) SURVILLE TOUSSAINT.

ITALY.

TREATY BETWEEN HER MAJESTY AND THE KING OF ITALY
FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS—
Signed at Rome, February 5, 1873.

Ratifications exchanged at Rome, March 18, 1873.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Italy, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitive from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, and is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Augustus Berkeley Paget, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Italy;

And His Majesty the King of Italy, the Noble Emilio Visconti Venosta, Deputy in the Parliament, and Minister Secretary of State for Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

* Extradition Acts applied by Order in Council from April 11, 1873.

ARTICLE I.

The High Contracting Parties engage to deliver up to each other reciprocally any persons who, being accused or convicted of any of the crimes specified in the Article following, committed within the territory of either of the said Parties, shall be found within the territory of the other, in the manner and under the conditions determined in the present Treaty.

ARTICLE II.

The crimes for which the extradition is agreed to are the following:—

1. Murder or attempt or conspiracy to murder, comprising the crimes designated by the Italian Penal Code as the association of criminals for the commission of such offences.
2. Manslaughter, comprising the crimes designated by the Italian Penal Code as wounds and blows wilfully inflicted which cause death.
3. Counterfeiting or altering money, and uttering or bringing into circulation counterfeit or altered money.
4. Forgery, counterfeiting or altering, or uttering of the thing or document that is forged or counterfeited or altered.
5. Larceny, or unlawful abstraction or appropriation.
6. Obtaining money or goods by false pretences (cheating or fraud).
7. Fraudulent bankruptcy.
8. Fraud, abstraction, or unlawful appropriation, by a bailee, banker, agent, factor, trustee, director, or member, or officer of any public or private company or house of commerce.
9. Rape.
10. Abduction.
11. Child-stealing.
12. Burglary and housebreaking, comprising the crimes designated by the Italian Penal Code as entry by night, or

even by day, with fracture or escalade, or by means of the key or other instrument, into the dwelling of another person with intent to commit a crime.

13. Arson.

14. Robbery with violence.

15. Threats by letter or otherwise, with intent to exact money or anything else.

16. Piracy, according to international law, when the pirate is a subject of neither of the High Contracting Parties, has committed depredations on the coasts, or on the high seas, to the injury of citizens of the requiring Party, or when, being a citizen of the requiring Party, and having committed acts of piracy, to the injury of a third State, he may be within the territory of the other Party, without being subjected to trial.

17. Sinking or destroying, or attempting to sink or destroy a vessel at sea.

18. Assaults on board a ship on the high seas, with intent to kill or to do grievous bodily harm.

19. Revolt or conspiracy by two or more persons on board a ship on the high seas, against the authority of the master.

Accomplices before the fact in any of these crimes shall moreover, also be delivered up, provided their complicity be punishable by the laws of both the Contracting Parties.

ARTICLE III.

The Italian Government shall not deliver up any Italian to the United Kingdom; and no subject of the United Kingdom shall be delivered up by it to the Italian Government.

ARTICLE IV.

In any case where an individual convicted or accused shall have obtained naturalization in either of the two Contracting

States after the commission of the crime, such naturalization shall not prevent the search for, arrest, and delivery of the individual. The extradition may, however, be refused if five years have elapsed from the concession of naturalization, and the individual has been domiciled, from the concession thereof, in the State to which the application is made.

ARTICLE V.

No accused or convicted person shall be given up if the offence for which he is claimed is political; or if he proves that the demand for his surrender has been made with the intention of trying and punishing him for a political offence.

ARTICLE VI.

The extradition shall not be granted if, since the commission of the crime, the commencement of proceedings, or the conviction, such a length of time has elapsed as to bar the penal prosecution or the punishment, according to the laws of the State to which application is made.

ARTICLE VII.

The accused or convicted person who has been given up shall not, until he has been liberated, or had an opportunity of returning to the country in which he was living, be imprisoned or subjected to trial in the State to which he has been given up, for any crime or on any charge other than that on account of which the extradition took place.

This does not apply to offences committed after the extradition.

ARTICLE VIII.

If the individual claimed is under prosecution or in danger for a crime committed in the country where he has taken refuge, his surrender may be deferred until the law has taken its course.

In case he should be proceeded against or detained in a country on account of obligations contracted with private individuals, or any other civil claim, his surrender nevertheless takes place, the injured party retaining his right to prosecute his claims against him before the competent authority.

ARTICLE IX.

The requisitions for extradition shall be made, respectively by means of the Diplomatic Agents of the High Contracting Parties.

The demand for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State applying for the extradition, and by such proof as, according to the law of the place where the fugitive is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person convicted, it must be accompanied by the sentence of condemnation of the competent Court of the State applying for the extradition.

The demand for extradition must not be founded upon a sentence *in contumacia*.

ARTICLE X.

If the demand for extradition be made according to the foregoing stipulations, the competent authorities of the State

to which the requisition is made shall proceed to arrest the fugitive.

The prisoner shall be taken before the competent Magistrate, who shall examine him, and make the preliminary investigations of the affair, in the same manner as if the arrest had taken place for a crime committed in the same country.

ARTICLE XI.

In the examinations to be made in conformity with the preceding stipulations, the authorities of the State to which the demand is addressed shall admit, as entirely valid evidence, the documents and depositions taken on oath in the other State, or copies of them, and likewise the warrants and sentences issued there; provided that such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or stamped with the official seal of the Department of Justice or some other Department of State.

ARTICLE XII.

If, within two months from the arrest of the accused, sufficient evidence be not produced for his extradition, he shall be liberated.

ARTICLE XIII.

The extradition shall not take place until the expiration of fifteen days after the arrest, and then only if the evidence has been found sufficient, according to the laws of the State to which the demand is addressed, to justify the committal of the prisoner for trial in case the crime had been committed in the territory of that State; or to show that the prisoner is the

identical person condemned by the Tribunals of the State which demands him.

ARTICLE XIV.

If the prisoner be not given up and taken away within two months from his apprehension or from the decision of the Court upon the demand for a writ of *habeas corpus* in the United Kingdom, he shall be set at liberty, unless sufficient cause be shown for the delay.

ARTICLE XV.

If the individual claimed by one of the two Contracting Parties, in conformity with the present Treaty, should be also claimed by another or by other States on account of crimes committed in their territories, his surrender shall, in preference, be granted according to priority of demand, unless an agreement be made between the Governments which make the requisition, either on account of the gravity of the crimes committed, or for any other reason.

ARTICLE XVI.

Every article found in the possession of the prisoner at the time of his arrest shall be seized, in order to be delivered up with him. Such delivery shall not be limited to the property or articles obtained by the robbery or fraudulent bankruptcy, but shall include everything that may serve as evidence of the crime; and it shall take place even when the extradition, after having been ordered, cannot take effect, either on account of the escape or the death of the delinquent.

ARTICLE XVII.

The High Contracting Parties renounce all claim for repayment of the expenses incurred for the arrest and maintenance of the person to be given up, and for his conveyance on board a ship; such expenses shall be borne by themselves respectively.

ARTICLE XVIII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of the two High Contracting Parties.

The requisition for the surrender of a person accused or condemned, who has taken refuge in any such Colony or possession of either Party, shall be made to the Governor or chief authority of such Colony or possession by the Chief Consular Officer of the other residing in such Colony or possession; or, if the accused or condemned person has escaped from a Colony or foreign possession of the Party on whose behalf the requisition is made, the requisition shall be made by the Governor or chief authority of such Colony or possession.

Such requisitions may be disposed of, in accordance, as far as possible, with the stipulations of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the extradition or to refer the matter to their own Government.

Her Britannic Majesty shall nevertheless be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender to His Italian Majesty of criminals who may have taken refuge in such Colonies or possessions, always in conformity, so far as possible, with the provisions of the present Treaty.

Finally, it is agreed that this stipulation does not apply to

the Island of Malta, the Ordinance of the Maltese Government of* [May 3, 1863 (No. 1230)], remaining in full force.

ARTICLE XIX.

The High Contracting Parties declare that the present stipulations apply as well to persons accused or convicted whose crimes, on account of which the extradition is demanded, may have been committed previously, as to those whose crimes may be committed subsequently to the date of this Treaty.

ARTICLE XX.

The present Treaty shall come into operation ten days after its publication according to the forms prescribed by the laws of the High Contracting Parties.

Either party may at any time put an end to this Treaty, which, however, shall remain in force for six months after the notice for its termination.

This Treaty shall be ratified, and the ratifications shall be exchanged at Rome within six weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed in duplicate, in English and Italian, the present Treaty, and have affixed thereto their respective seals.

Done at Rome, the 5th day of February, in the year of our Lord one thousand eight hundred and seventy-three.

(L.S.) A. B. PAGET.

(L.S.) VISCONTI VENOSTA.

* See the Declaration of May 7, 1873, which follows the Treaty.

ITALY.

DECLARATION RECTIFYING AN ERROR IN ARTICLE XVIII. OF
THE TREATY BETWEEN HER MAJESTY AND THE KING OF
ITALY OF THE 5TH FEBRUARY, 1873, FOR THE MUTUAL
SURRENDER OF FUGITIVE CRIMINALS.—*Signed at Rome,*
May 7, 1873.

THE Envoy Extraordinary and Minister Plenipotentiary of
Her Majesty the Queen of Great Britain and Ireland to His
Majesty the King of Italy, and His Italian Majesty's Minister
for Foreign Affairs, having concurrently recognized a material
error in the date of the Ordinance of the Maltese Government
of the 21st of February, 1863, as it is mentioned at the end
of the XVIIIth Article of the Extradition Treaty of the 5th
of February, 1873, between Great Britain and Italy, have, by
common consent, declared that the words:—

“Finally, it is agreed that this stipulation does not apply
to the Island of Malta, the Ordinance of the Maltese Govern-
ment of May 3, 1863 (No. 1230), remaining in full force,”
shall be read:—

“Finally, it is agreed that this stipulation does not apply
to the Island of Malta, the Ordinance of the Maltese Govern-
ment of the 21st of February, 1863, remaining in full force.”

The present Declaration is signed in duplicate at Rome, this
7th day of May, 1873.

(L.S.) A. B. PAGET.

(L.S.) VISCONTI VENOSTA.

LUXEMBURG.

TREATY BETWEEN HER MAJESTY AND THE KING OF THE NETHERLANDS, GRAND DUKE OF LUXEMBURG, FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS.—*Signed at Luxemburg, November 24, 1880.*

Ratifications exchanged at Brussels, January 5, 1881.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the territories of Her Britannic Majesty and the Grand Duchy of Luxemburg, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable William Stuart, a Companion of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to his Majesty the King of the Netherlands, as Grand Duke of Luxemburg;

And His Majesty the King of the Netherlands, Grand Duke of Luxemburg, Baron Felix de Blochausen, Grand Cross of the Order of the Crown of Oak, Chevalier of the Second Class of

* Extradition Acts applied by Order in Council from March 15, 1881.

the Order of the Golden Lion of the House of Nassau, &c., &c., his Minister of State, President of the Government of the Grand Duchy of Luxemburg ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, so far as concerns the Grand Duchy of Luxemburg, engages to deliver up, under the like circumstances and conditions, all persons, excepting subjects of the Grand Duchy, who, having been charged with, or convicted by the Tribunals of one of the two High Contracting Parties of any of the crimes or offences enumerated in Article II. committed in the territory of the one Party, shall be found within the territory of the other.

ARTICLE II.

The crimes for which the extradition is to be granted are the following:—

1. Murder (including assassination, parricide, infanticide, poisoning, or attempt to murder).
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Aggravated or indecent assault. Carnal knowledge of a girl under the age of ten years; carnal knowledge of a girl

above the age of ten years and under the age of twelve years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under twelve years of age.

6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.

7. Abduction of minors.

8. Bigamy.

9. Wounding, or inflicting grievous bodily harm.

10. Assaulting a magistrate or peace or public officer.

11. Threats by letter or otherwise with intent to extort money or other things of value.

12. Perjury, or subornation of perjury.

13. Arson.

14. Burglary or housebreaking, robbery with violence, larceny or embezzlement.

15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.

16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been unlawfully obtained.

17. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;

(b) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered;

(c) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.

18. Crimes against bankruptcy law.

19. Any malicious act done with intent to endanger persons in a railway train.

20. Malicious injury to property, if such offence be indictable.

The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the

fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of the Grand Duchy of Luxemburg, has already been tried and discharged or punished, or is still under trial, in the Grand Duchy or in the United Kingdom, respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of the Grand Duchy of Luxemburg, should be under examination for any other crime in the Grand Duchy or in the United Kingdom, respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE IV.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE V.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

ARTICLE VI.

A person surrendered can in no case be kept in prison, or be brought to trial, in the State to which the surrender has been made, for any other crime or on account of any other matter than those for which the extradition shall have taken place until he has been restored or has had the opportunity of returning to the country from whence he was surrendered.

The period of one month shall be considered as the limit of the period during which the prisoner may, with the view of securing the benefits of this Article, return to the country from whence he was surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VII.

The requisition for extradition must always be made by the way of diplomacy, and to wit, in the Grand Duchy of Luxemburg by the British Minister in Luxemburg, and in the United Kingdom to the Secretary of State for Foreign Affairs by the Foreign Minister in Great Britain, who, for the purposes of this Treaty, is recognized by Her Majesty as a Diplomatic Representative of the Grand Duchy of Luxemburg.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

ARTICLE VIII.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, according to the laws of the country in which he is found.

ARTICLE IX.

The extradition shall not take place before the expiration of fifteen days from the date of the fugitive criminal's committal to prison to await his surrender, and then only if the evidence produced in due time be found sufficient according to the laws of the State applied to.

ARTICLE X.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided however that, in the United Kingdom, the accused shall, in such case, be sent, as speedily as possible before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in the Grand Duchy of Luxemburg,

if, within fourteen days, a requisition shall not have been made for his surrender by the Diplomatic Agent of the country.

ARTICLE XI.

If, in any criminal matter, pending in any Court or Tribunal of one of the two countries, it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the law in force on this subject in the country where the witness may be.

ARTICLE XII.

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XIII.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship, as well as for the reimbursement of the expense incurred in taking the evidence of any witness in consequence of Article XI., and in giving up and returning seized articles. They reciprocally agree to bear such expenses themselves.

ARTICLE XIV.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or to the Supreme Authority of such Colony or Possession through the Luxemburg Consul; or, in case there should be no Luxemburg Consul, through the Consular Agent of another State charged for the occasion with Luxemburg interests in the Colony or Possession in question, and recognized by such Governor or Supreme Authority as such.

The Governor or Supreme Authority above mentioned shall decide with regard to such requisition as nearly as possible in accordance with the provisions of the present Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of such individuals as shall have committed in the Grand Duchy of Luxemburg any of the crimes hereinafore mentioned, who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign Possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XV.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the

laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at Brussels as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Luxemburg, the twenty-fourth day of November, 1867, the year of Our Lord one thousand eight hundred and sixty-seven.

(L.S.) W. STUART.

(L.S.) F. DE BLOCHAUSSÉ.

THE NETHERLANDS.

TREATY BETWEEN HER MAJESTY AND THE KING OF THE NETHERLANDS, FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS.—*Signed at the Hague, June 19, 1874.*

Ratifications exchanged at the Hague, July 21, 1874.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Netherlands, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable Sir Edward Alfred John Harris, a Vice-Admiral in Her Majesty's Royal Navy, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Netherlands;

And His Majesty the King of the Netherlands, M. Joseph Lodewyk Hendrik Alfred Baron Gericke van Herwynen, Commander of the Order of the Netherland Lion, Knight Grand Cross of the Oaken Crown of Luxemburg, &c. &c., His Majesty's Minister for Foreign Affairs; and M. Gerrit de Vries, Commander of the Order of the Netherland Lion, His Majesty's Minister of Justice;

* Extradition Acts applied by Order in Council from August 17, 1874.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles :—

ARTICLE I.

It is agreed that Her Britannic Majesty and His Majesty the King of the Netherlands shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party.

ARTICLE II.

The crimes for which the extradition is to be granted are the following ;—

1. Murder (including assassination, parricide, infanticide, and poisoning), or attempt to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting or altering of public or private documents, including forgery, counterfeiting or altering of paper money, bank notes, or other public securities.

5. Embezzlement or larceny, comprehending any larceny that by the Netherland Penal Law is not considered as “vol simple.”

6. Obtaining money or goods by false pretences, including the crimes designated in the Netherland Penal Law as speculation, abstraction, or misapplication by bailies or public accountants.

7. Crimes against Bankruptcy Law which by the Netherland Penal Law are considered as fraudulent bankruptcy.

8. Perjury.

9. Rape.

10. Arson.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III.

No subject of the Netherlands shall be delivered up by the Government of the Netherlands to the Government of the United Kingdom; and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of the Netherlands.

With reference to the application of the present Treaty, are comprised in the denomination of "subjects," not only naturalized citizens of the country, but also such foreigners as according to the laws of either of the Contracting Parties, are assimilated to subjects, as well as such foreigners, who being domiciled in the country, and having married a citizen thereof, have one or more children by that marriage born there.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of the Netherlands, has already been tried and discharged or punished, or is still under trial, in the Netherlands or in the United Kingdom, respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of the Netherlands, should be under examination for any other crime in the Netherlands or in the United King-

dom, respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

The extradition shall also be deferred if the person claimed should be detained for debt by a sentence passed before the requisition for the surrender under the laws of the country where he shall be found.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or has had the opportunity of returning to the country from whence he was surrendered.

The period of one month shall be considered as the limit of the period during which the prisoner may, with the view of

securing the benefits of this Article, return to the country from whence he was surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties, respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, according to the laws of the country in which he is found.

ARTICLE X.

The extradition shall not take place before the expiration of fifteen days from the committal, and then only if the evidence

produced in due time be found sufficient according to the laws of the State applied to.

ARTICLE XI.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted, in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided however that in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in the Netherlands, if within fourteen days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country.

ARTICLE XII.

If, in any criminal matter pending in any Court or tribunal of one of the two countries, it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be.

ARTICLE XIII.

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extra-

dition takes place; and the said delivery shall extend not merely to the stolen articles, but to everthing that may serve as a proof of the crime.

ARTICLE XIV.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship, as well as for the reimbursement of the expenses incurred in taking the evidence of any witness in consequence of Article XII., and in giving up and returning seized articles. They reciprocally agree to bear such expenses themselves.

ARTICLE XV.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at the Hague as soon as possible.

In witness wherof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at the Hague, the nineteenth day of June, in the year of our Lord One thousand eight hundred and seventy-four.

(L.S.)	E. A. J. HARRIS.
(L.S.)	L. GERICKE.
(L.S.)	DE VRIES.

RUSSIA.

TREATY BETWEEN HER MAJESTY AND THE EMPEROR OF ALL
THE RUSSIAS FOR THE MUTUAL SURRENDER OF FUGITIVE
CRIMINALS.—*Signed at London, November 24, 1886.*

Ratifications exchanged at London, February 2, 1887.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the Emperor of all the Russias, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two Countries and their jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, the Right Honourable Stafford Henry Earl of Iddesleigh, Viscount St. Cyres, a Peer of the United Kingdom, and a Baronet of Great Britain, Knight Grand Cross of the Most Honourable Order of the Bath, a Member of Her Majesty's Most Honourable Privy Council, Her Majesty's Principal Secretary of State for Foreign Affairs, &c. &c. :

And His Majesty the Emperor of all the Russias, M. Georges de Staal, Privy Councillor, Grand Cross of several Russian and foreign Orders, his Ambassador Extraordinary

* Extradition Acts applied by Order in Council from March 21, 1887.

and Plenipotentiary to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, &c. &c.;

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles :—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes or offences for which the extradition is to be granted are the following :—

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.
5. Embezzlement or larceny.
6. Malicious injury to property if the offence be indictable.
7. Obtaining money or goods by false pretences.
8. Crimes against bankruptcy law.
9. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any Company, made criminal by any law for the time being in force.
10. Perjury, or subornation of perjury.
11. Rape.

12. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.

13. Indecent assault.

14. Administering drugs or using instruments with intent to procure the miscarriage of a woman.

15. Abduction.

16. Child stealing.

17. Kidnapping and false imprisonment.

18. Burglary or housebreaking.

19. Arson.

20. Robbery with violence.

21. Maliciously wounding or inflicting grievous bodily harm.

22. Threats by letter, or otherwise, with intent to extort.

23. Piracy by law of nations.

24. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

25. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.

26. Revolt or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

27. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Russian Government, has already been tried and discharged or punished, or is still under trial, within the Russian or British dominions respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Russian Government should be under examination, or is undergoing sentence under a conviction, for any other crime within the Russian or British dominions respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been

made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate,

who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Russia, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Russian State.

2. Depositions or affirmations or the copies thereof must purport to be certified under the hand of a Judge, Magistrate, or officer of the Russian State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Russian State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the Russian State; but any other mode of authentication for the time being permitted by the law of the British dominion where the examination is taken, may be substituted for the foregoing.

ARTICLE XI.

If the fugitive has been arrested in Russia his surrender shall be granted if upon examination by a competent authority it appears that the documents furnished by the British Govern-

ment furnish sufficient *prima facie* evidence to justify the extradition.

The Russian authorities shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents or copies thereof: Provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.

ARTICLE XII.

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. And the fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIII.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place ; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII.

When, for the purposes of a criminal matter, not being of a political character, pending in any of its Courts or Tribunals, either Government shall desire to obtain the evidence of witnesses residing in the other State, a " Commission Rogatoire " to that end shall be sent through the diplomatic channel, and which shall be executed in conformity with the law of the State where the evidence is to be taken.

The Government which sends the " Commission Rogatoire " will, however, take all necessary steps and pay all expenses for finding and procuring the attendance before the Magistrate of the witnesses named for examination in such Commission.

ARTICLE XVIII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign Possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions may be made to the Governor or Chief Authority of such Colony or Possession by the Chief Consular Officer of the Russian Empire in such Colony or Possession.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign Possession will allow, to the provisions of this Treaty, by the said Governor or Chief Authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Russian criminals who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign Possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign Possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XIX.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated

by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the twenty-fourth day of November, 1886.

(L.S.) IDDESLEIGH.

(L.S.) STAAL.

SALVADOR.

TREATY BETWEEN HER MAJESTY AND THE REPUBLIC OF
SALVADOR FOR THE MUTUAL SURRENDER OF FUGITIVE
CRIMINALS.—*Signed at Paris, June 23, 1881.*

Ratifications exchanged at London, November 8, 1882.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Excellency the President of the Republic of Salvador, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have named as their Plenipotentiaries to conclude a Treaty (that is to say):

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Richard Bickerton Pemell, Lord Lyons, a Peer of the United Kingdom of Great Britain and Ireland, Knight Grand Cross of the Most Honourable Order of the Bath, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, one of Her Britannic Majesty's Most Honourable Privy Council, and Her Majesty's Ambassador Extraordinary and Plenipotentiary to the French Republic;

And His Excellency the President of the Republic of Salvador, Señor Don José Maria Torres Caicedo, Minister Plenipo-

* Extradition Acts applied by Order in Council from January 13, 1883.

tentiary of the Republic of Salvador to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Grand Officer of the Legion of Honour;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles :—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II., committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II.

The extradition shall be reciprocally granted for the following crimes or offences :—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Aggravated or indecent assault; carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.
6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.
7. Abduction of minors.
8. Bigamy.

9. Wounding, or inflicting grievous bodily harm.
10. Assaulting a Magistrate, or peace or public officer.
11. Threats, by letter or otherwise, with intent to extort money or other things of value.
12. Perjury or subornation of perjury.
13. Arson.
14. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.
16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
17. (a.) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
(b.) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered.
(c.) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.
18. Crimes against bankruptcy law.
19. Any malicious act done with intent to endanger persons in a railway train.
20. Malicious injury to property, if such offence be indictable.
21. Crimes committed at sea :—
(a.) Piracy by the law of nations.
(b.) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
(c.) Revolt or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

(d.) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

22. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

No Salvadorian shall be delivered up by the Government of Salvador to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Salvador.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Salvador, has already been tried and discharged or punished, or is still under trial in the territory of Salvador or in the United Kingdom respectively for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or on the part of the Government of Salvador, should be under examination for any other crime in the territory of Salvador or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosc-

cution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place. This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed

against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded solely on sentences passed *in contumaciam*, but persons convicted for contumacy shall be deemed to be accused persons.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X.

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Salvador as in the United Kingdom, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents purport to be signed or certified by a Judge, Magistrate, or Officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XIII.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of

other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should have been made between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or chief authority of such Colony or Possession by the Chief Consular Officer of the Republic of Salvador in such Colony or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Salvadorian criminals who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign Possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty, after receiving the approval of the Congress of Salvador, shall be ratified and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Paris, the twenty-third day of June, in the year of our Lord one thousand eight hundred and eighty-one.

(L.S.) LYONS.

(L.S.) J. M. TORRES CAICEDO.

SPAIN.

TREATY BETWEEN HER MAJESTY AND THE KING OF SPAIN
FOR THE MUTUAL SURRENDER OF CRIMINALS.—*Signed at
London, June 4, 1878.*

Ratifications exchanged at London, November 21, 1878.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Spain, having judged it expedient, with a view to the better administration of justice and the prevention of crime, that persons charged with, or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude the present Treaty, and have appointed as their Plenipotentiaries, namely :—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Robert Arthur Talbot Gascoyne Cecil, Marquis and Earl of Salisbury, Viscount Cranborne, Dorset, and Baron Cecil of Essendine, a Peer of the United Kingdom, a Member of Her Majesty's Most Honourable Privy Council, Her Principal Secretary of State for Foreign Affairs;

And His Majesty the King of Spain, Don Manuel Rancés y Villanueva, Marquis of Casa Laiglesia, a Senator of the Kingdom, Knight Grand Cross of the Royal and Distinguished Order of Charles III., and Knight of the First Class of the Civil Order of Beneficence of Spain; Knight Grand Cross of

* Extradition Acts applied by Order in Council from December 9, 1878.

the Papal Order of Gregory the Great; Knight of the First Class of the Royal Order of the Red Eagle of Prussia; Knight Grand Cross of the Royal Orders of the Crown of Italy, of Frederick of Wurtemberg, and of Albert the Valorous of Saxony; of the Grand Ducal Orders of Philip the Magnanimous of Hesse-Darmstadt, of the White Hawk of Saxe-Weimar, of the Crown of Vandalia of Mecklenburg-Schwerin, and of the Ducal Order of Adolphus of Nassau; Knight Grand Cross of the Lion and the Sun of Persia, &c., his Envoy Extraordinary and Minister Plenipotentiary to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland;

Who, after having communicated to each other their respective full powers, and found them in good and due form, have agreed upon the following Articles:—

ARTICLE I.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and His Majesty the King of Spain engages to deliver up, under the like circumstances and conditions, all persons, excepting his own subjects, who, having been charged with, or convicted by the Tribunals of one of the two High Contracting Parties of the crimes or offences enumerated in Article II., committed in the territory of the one Party, and who shall be found within the territory of the other.

ARTICLE II.

The extradition shall be reciprocally granted for the following crimes or offences:—

1. Murder (including assassination, parricide, infanticide poisoning, or attempt to murder).

2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Aggravated or indecent assault. Carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.
6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.
7. Abduction of minors.
8. Bigamy.
9. Wounding or inflicting grievous bodily harm.
10. Assaulting a Magistrate or peace or public officer.
11. Threats by letter or otherwise with intent to extort money or other things of value.
12. Perjury, or subornation of perjury.
13. Arson.
14. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.
16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been unlawfully obtained.
17. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;
(b) Forgery, or counterfeiting or altering or uttering what is forged, counterfeited or altered;
(c) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.

18. Crimes against bankruptcy law.

19. Any malicious act done with intent to endanger persons in a railway train.

20. Malicious injury to property, if such offence be in dictable.

21. Crimes committed at sea.

(a) Piracy by the law of nations.

(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(c) Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

(d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

22. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted.

ARTICLE IV.

No person shall be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the competent authority of

the State in which he is that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE V.

In the States of His Majesty the King of Spain, excepting the provinces or possessions beyond sea, the proceedings for demanding and obtaining the extradition shall be as follows:—

The Diplomatic Representative of Great Britain shall send to the Minister for Foreign Affairs (*Ministro de Estado*), with the demand for extradition, an authenticated and legalized copy of the sentence or of the warrant of arrest against the person accused, clearly showing the crime or offence for which proceedings are taken against the fugitive. This judicial document shall be accompanied, if possible, by a description of the person claimed, and any other information or particulars that may serve to identify him.

These documents shall be communicated by the Minister for Foreign Affairs to the Minister of Grace and Justice, by whose Department, after examining the documents and finding that there is reason for the extradition, a Royal Order will be issued granting it and directing the arrest of the person claimed and his delivery to the British authorities.

In virtue of the said Royal Order, the Minister of the Interior (*Ministro de la Gobernacion*) will adopt the fitting measures for the arrest of the fugitive, and when this has taken place, the person claimed shall be placed at the disposal of the Diplomatic Representative who has demanded his extradition, and he shall be taken to the part of the frontier or to the seaport where the agent appointed for the purpose by Her Britannic Majesty's Government is ready to take charge of him.

In case the documents furnished by the said Government for

the identification of the person claimed, or the information obtained by the Spanish authorities for the same purpose, should be considered insufficient, immediate notice thereof shall be given to the Diplomatic Representative of Great Britain, and the person under arrest shall be detained until the British Government shall have furnished fresh evidence to prove his identity or to clear up any other difficulty relative to the examination and decision of the affair.

ARTICLE VI.

In the dominions of Her Britannic Majesty, other than the Colonies or foreign Possessions of Her Majesty, the manner of proceeding, in order to demand and obtain extradition, shall be as follows:—

(A.) In the case of a person accused—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Representative of His Majesty the King of Spain. The said demand shall be accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Spain, and duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Secre-

tary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Spanish Government.

(B.) In the case of a person convicted—The course of proceeding shall be the same as above indicated, except that the warrant to be transmitted by the Diplomatic Representative of Spain in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

(C.) Persons convicted by judgment in default or *arrêt de contumace*, shall be, in the matter of extradition, considered as persons accused, and, as such, be surrendered.

(D.) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a

Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus* ; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE VII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the facts of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE VIII.

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction :

provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall in accordance with this Article be discharged, as well in Spain as in the United Kingdom, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE IX.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal, or within two months after the adverse decision of the Court upon the return to a writ of *habeas corpus* in the United Kingdom, he shall be discharged from custody unless sufficient cause be shown to the contrary.

ARTICLE X.

In the Provinces beyond sea, Colonies and other Possessions beyond sea of the two High Contracting Parties, the manner of proceeding shall be as follows :—

The requisition for extradition of the fugitive criminal who has taken refuge in an over-sea Province, Colony, or Possession of either of the two Contracting Parties, shall be made to the Governor or Chief Authority of such Province, Colony, or Possession by the Chief Consular Officer of the other State in such Province, Colony, or Possession ; or, if the fugitive has escaped from an over-sea Province, Colony, or Possession of

the State on whose behalf the extradition is demanded, by the Governor or Chief Authority of such Province, Colony, or Possession.

In these cases the provisions of this Treaty shall be observed as far as possible by the respective Governors or Chief Authorities, who, however, shall be at liberty either to grant the extradition or to refer the decision of the matter to the Governments of their respective countries.

ARTICLE XI.

In cases where it may be necessary, the Spanish Government shall be represented at the English Courts by the Law Officers of the Crown, and the English Government in the Spanish Courts by the Public Prosecutor (*Ministerio Fiscal*).

The respective Governments will give assistance to the Diplomatic Representatives who claim their intervention for the custody and security of the persons subject to extradition.

ARTICLE XII.

The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of that country.

ARTICLE XIII.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective

territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should exist between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason.

ARTICLE XIV.

If the individual claimed should be under prosecution, or have been condemned for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, the extradition shall nevertheless take place.

ARTICLE XV.

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the extradition takes place. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime or offence, and shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

ARTICLE XVI.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest

and maintenance of the person to be surrendered, and his conveyance as far as the frontier; they reciprocally agree to bear such expenses themselves.

ARTICLE XVII.

The present Treaty shall be ratified and the ratifications shall be exchanged at London as soon as possible.

It shall come into operation ten days after its publication, in conformity with the laws of the respective countries, and each of the Contracting Parties may at any time terminate the Treaty on giving to the other six months' notice of its intention to do so.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the fourth day of June, in the year of Our Lord one thousand eight hundred and seventy-eight.

(L.S.) SALISBURY.

(L.S.) MARQUES DE CASA LAIGLESIA.

SWEDEN AND NORWAY.

TREATY BETWEEN HER MAJESTY AND THE KING OF SWEDEN
AND NORWAY FOR THE MUTUAL SURRENDER OF FUGITIVE
CRIMINALS.—*Signed at Stockholm, June 26, 1873.*

Ratifications exchanged at Stockholm, August 28, 1873.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Sweden and Norway, having judged it expedient, with a view to the better administration of justice and to the more complete prevention of crime within the respective countries, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable Edward Morris Erskine, a Companion of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Sweden and Norway;

And His Majesty the King of Sweden and Norway, Henrick Wilhelm Bredberg, Grand Cross of the Order of the Polar Star, His Majesty's Councillor of State and Acting Minister for Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

* Extradition Acts applied by Order in Council from October 17, 1873.

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ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes for which the extradition is to be granted are the following:—

1. Murder (child murder and poisoning included) or attempt to murder.

2. Manslaughter.

3. Counterfeiting or altering money, uttering or bringing into circulation knowingly counterfeit or altered money.

4. Forgery or counterfeiting or altering or uttering what is forged, or counterfeited, or altered, comprehending the crimes designated in the Swedish and Norwegian penal codes as counterfeiting or falsification of paper money, bank notes or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation or wilfully using such counterfeited, forged, or falsified papers.

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences, except, as regards Norway, cases in which the crime is not accompanied by aggravating circumstances according to the law of that country.

7. Crimes by bankrupts against bankruptcy law.

8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.

9. Rape.
 10. Abduction.
 11. Child-stealing.
 12. Burglary or housebreaking.
 13. Arson.
 14. Robbery with violence.
 15. Threats by letter or otherwise with intent to extort, except, as regards Norway, cases in which this crime is not punishable by the laws of that country.
 16. Sinking or destroying a vessel at sea, or attempting to do so.
 17. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
 18. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master; except, as regards Norway, conspiracy to revolt.
- The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III.

No Swedish or Norwegian subject shall be delivered up to the Government of the United Kingdom; and no subject of the United Kingdom shall be delivered up to the Swedish or Norwegian Government.

ARTICLE IV.

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the country where he has taken refuge, for the crime for which his extradition is demanded.

If the person claimed should be under examination for any

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other crime in the country where he has taken refuge, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the criminal has taken refuge.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered by either of the High Contracting Parties to the other cannot, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any crime committed in the other country other than that on account of which the extradition shall have taken place.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisitions for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

The requisition ought, as far as possible, to be accompanied by a description of the person accused or convicted, in order to identify him.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

The extradition shall not take place before the expiration of fifteen days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

ARTICLE X.

In the examinations which they have to make, in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XI.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XII.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XIII.

Each of the High Contracting Parties shall defray and bear expenses incurred by it in the arrest, maintenance and conveyance of the individual to be surrendered till placed on board

ship, as well as in keeping and conveying the articles which are to be delivered up in conformity with the stipulations of the preceding Article.

The individual to be surrendered shall be conveyed to the port specified by the applying Government, at whose expense he shall be taken on board the ship to convey him away.

If it be necessary to convey the individual claimed through the territories of another State, the expenses incurred thereby shall be defrayed by the applying State.

ARTICLE XIV.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign Possession of either Party, shall be made to the Governor or Chief Authority of such Colony or Possession by the Chief Consular Officer of the other in such Colony or Possession; or, if the fugitive has escaped from a Colony or foreign Possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such Colony or Possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Swedish and Norwegian criminals who may there take refuge, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XV.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

ARTICLE XVI.

The present Treaty shall be ratified, and the ratifications shall be exchanged at Stockholm as soon as may be possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their seals.

Done at Stockholm, the 26th day of June, in the year of our Lord one thousand eight hundred and seventy-three.

(L.S.) E. M. ERSKINE.

(L.S.) H. W. BREDBERG.

SWITZERLAND.

TREATY BETWEEN HER MAJESTY AND THE SWISS FEDERAL COUNCIL FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS.—*Signed at Berne, November 26, 1880.*

Ratifications exchanged at Berne, March 15, 1881.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland and the Swiss Federal Council having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with, or convicted of, the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable Hussey Crespigny Vivian, a Companion of Her Most Honourable Order of the Bath, Her Majesty's Minister Resident to the Swiss Confederation ;

And the Swiss Federal Council, its Vice-President, F. Anderwert, Federal Councillor and Chief of the Federal Department of Justice and Police ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

* Extradition Acts applied by Order in Council from May 30, 1881.

ARTICLE I.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and the Swiss Federal Council engages to deliver up, under the like circumstances and conditions, all persons, excepting Swiss citizens, who, having been charged with, or convicted by the Tribunals of one of the two High Contracting Parties, of the crimes or offences enumerated in Article II., committed in the territory of the one Party, shall be found within the territory of the other.

In the event of the Federal Council being unable, by reason of his Swiss nationality, to grant the extradition of an individual who, after having committed in the United Kingdom one of the crimes or offences enumerated in Article II., should have taken refuge in Switzerland, the Federal Council engages to give legal effect to and prosecute the charge against him according to the laws of the Canton of his origin; and the Government of the United Kingdom engages to communicate to the Federal Council all documents, depositions, and proofs relating to the case, and to cause the commissions of examination directed by the Swiss Judge, and transmitted through the proper Diplomatic channel, to be executed gratuitously.

ARTICLE II.

The crimes for which the extradition is to be granted are the following:—

1. Murder (including infanticide), and attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery, or counterfeiting, or altering, or uttering what

is forged, or counterfeited, or altered; comprehending the crimes designated in the Penal Code of both States as counterfeiting or falsification of paper money, bank notes, or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.

5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes against bankruptcy law.
8. Fraud committed by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.
9. Rape.
10. Abduction of minors.
11. Child-stealing or kidnapping.
12. Burglary or housebreaking, with criminal intent.
13. Arson.
14. Robbery with violence.
15. Threats by letter or otherwise with intent to extort.
16. Perjury or subornation of perjury.
17. Malicious injury to property, if the offence be indictable.

The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

A fugitive criminal may be apprehended in either country under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant,

justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London.

Requisitions for provisional arrest may be addressed by post or by telegraph, provided they purport to be sent by some judicial or other competent authority. Such requisitions must contain a description in general terms of the crime or offence, and a statement that a warrant has been granted for the arrest of the criminal, and that his extradition will be demanded.

He shall in accordance with this Article be discharged, as well in the United Kingdom as in Switzerland, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of the country claiming his surrender in accordance with the stipulations of this Treaty.

ARTICLE IV.

The requisition for extradition must always be made by the way of diplomacy, and, to wit, in Switzerland by the British Minister to the President of the Confederation, and in the United Kingdom to the Secretary of State for Foreign Affairs by the Swiss Consul-General in London, who, for the purposes of this Treaty, is hereby recognized by Her Majesty as a Diplomatic Representative of Switzerland.

ARTICLE V.

In the dominions of Her Britannic Majesty, other than the Colonies or foreign Possessions of Her Majesty, the manner of proceeding shall be as follows:—

(a.) In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Representative of the Swiss Confederation. The said demand shall be accompanied by a warrant of arrest, or other equivalent judicial document, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Switzerland, and duly authenticated depositions or statements taken on oath, or solemnly declared to be true, before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender ; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be sent to such seaport town as shall, in each special case, be selected for his delivery to the Swiss Government.

(b.) In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Diplomatic Representative of Switzerland in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced shall consist of the penal sentence passed against the convicted person by the competent Court of the State claiming his extradition.

(c.) Persons convicted by judgment in default or *arrêt de contumace* shall be, in the matter of extradition, considered as persons accused, and may, as such, be surrendered.

(d.) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case, the Court may at once order his delivery to the person authorized to receive him, without waiting for the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE VI.

In Switzerland the manner of proceeding shall be as follows :—

The requisition for the extradition of an accused person must be accompanied by an authentic copy of the warrant of arrest, issued by a competent official or Magistrate, clearly setting forth the crime or offence of which he is accused, together with a properly legalized information setting forth the facts and evidence upon which the warrant was granted.

If the requisition relates to a person already convicted, it must be accompanied by an authentic copy of the sentence or conviction, setting forth the crime or offence of which he has been convicted.

The requisition must also be accompanied by a description of the person claimed, and, if it be possible, by other information and particulars which may serve to identify him.

After having examined these documents, the Swiss Federal Council shall communicate them to the Cantonal Government in whose territory the person charged is found, in order that he may be examined by a judicial or police officer on the subject of their contents.

The Cantonal Government will transmit the *procès-verbal* of the examination, together with all the documents, accompanied, if there be one, by a more detailed report to the Federal Council, who, after having examined them, and there be no opposition on either side, will grant the extradition, and will communicate its decision both to the British Legation and to the Cantonal Government in question, to the latter in order that it may send the person to be surrendered to such place on the frontier, and deliver him to such foreign police authority as the British Legation may name in each special case.

Should the documents furnished with a view of proving the facts, or of establishing the identity of the accused, or the particulars collected by the Swiss authorities appear insufficient, notice shall be immediately given to the Diplomatic Representative of Great Britain, in order that he may furnish further evidence. If such further evidence be not furnished within fifteen days, the person arrested shall be set at liberty.

In the event of the application of this Treaty being contested, the Swiss Federal Council will transmit the documents ("*dossier*") to the Swiss Federal Tribunal, whose duty it is to decide definitely the question whether extradition should be granted or refused.

The Federal Council will communicate the judgment of the Federal Tribunal to the British Legation. If this judgment grants the extradition, the Federal Council will order its execution, as in the case when the Federal Council itself grants the extradition. If, on the other hand, the Federal Tribunal refuses the extradition, the Federal Council will immediately order the person accused to be set at liberty.

ARTICLE VII.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the depositions or statements of witnesses, either sworn or solemnly declared to be true, taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, provided such documents purport to be signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the official seal of a British Secretary of State, or of the Chancellor of the Swiss Confederation, being affixed thereto.

The personal attendance of witnesses can be required only to establish the identity of the person who is being proceeded against with that of the person arrested.

ARTICLE VIII.

If proof sufficient to warrant the extradition be not furnished within two months from the day of the apprehension, the person arrested shall be discharged from custody.

ARTICLE IX.

In cases where it may be necessary, the Swiss Government shall be represented at the English Courts by the Law Officers of the Crown, and the English Government in the Swiss Courts by the competent Swiss authorities.

The respective Governments will give the necessary assistance within their territories to the Representatives of the other State who claim their intervention for the custody and security of the persons subject to extradition.

No claim for the repayment of expenses for the assistance mentioned in this Article shall be made by either of the Contracting Parties.

ARTICLE X.

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition other than the crime for which his surrender has been granted.

ARTICLE XI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try and punish him for an offence of a political character.

ARTICLE XII.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal

prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired according to the laws of the State applied to.

ARTICLE XIII.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Swiss Government, has already been tried and discharged or punished, or is still under trial, in one of the Swiss Cantons or in the United Kingdom respectively, for the crime for which his extradition is demanded.

ARTICLE XIV.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Swiss Government, should be under examination, or have been condemned for any other crime, in one of the Swiss Cantons or in the United Kingdom respectively, his extradition may be deferred until he shall have been set at liberty in due course of law.

In case such individual should be proceeded against in the country in which he has taken refuge, on account of obligations contracted towards private individuals, his extradition shall, nevertheless, take place; the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XV.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories,

his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XVI.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

This delivery shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed, unless the claims of third parties with regard to the above-mentioned articles render such delivery inexpedient.

ARTICLE XVII.

The Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance to the frontiers of the State to which the requisition is made; they reciprocally agree to bear such expenses themselves.

ARTICLE XVIII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or to the Supreme Authority of

such Colony or Possession through the Swiss Consul residing there, or, in case there should be no Swiss Consul, through the recognized Consular Agent of another State charged with the Swiss interests in the Colony or Possession in question.

The Governor or Supreme Authority above mentioned shall decide with regard to such requisitions as nearly as possible in accordance with the provisions of the present Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of such individuals as shall have committed in Switzerland any of the crimes hereinbefore mentioned, who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign Possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XIX.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties.

After the Treaty shall have come into force, the Treaty concluded between the High Contracting Parties on the 31st of March, 1874, shall be considered as cancelled, except as to any proceedings that may have been already taken or commenced in virtue thereof.

It may be terminated by either of the High Contracting Parties on giving to the other Party six months' notice of

its intention to terminate the same, but no such notice shall exceed the period of one year.

The Treaty shall be ratified, and the ratifications shall be exchanged at Berne as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and eighty.

(L.S.) C. VIVIAN.

(L.S.) ANDERWERT.

TONGA.

TREATY OF FRIENDSHIP, &C., BETWEEN HER MAJESTY AND
HIS MAJESTY THE KING OF TONGA.—*Signed at Nukualofa,*
November 29, 1879.

Ratifications exchanged at Nukualofa, July 3, 1882.*

* * * * *

ARTICLE IV.

Her Britannic Majesty agrees to surrender to His Majesty the King of Tonga any Tongan subject who, being accused or convicted of any of the under-mentioned crimes, committed in the territory of the King of Tonga, shall be found within the territory of Her Britannic Majesty.

The crimes for which such surrender may be granted are the following :—

Murder, or attempt to murder ;
Embezzlement or larceny ;
Fraudulent bankruptcy ;
Forgery.

Her Britannic Majesty may, however, at any time put an end to this Article by giving notice to that effect to His Majesty the King of Tonga. The Article shall, however, remain in force for six months after the notice of its termination.

* * * * *

* Extradition Acts applied by Order in Council from November 30, 1882.

PROTOCOL.

The undersigned in proceeding to the exchange of the ratifications of the Treaty signed at Nukualofa on the 29th November, 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of Tonga, have agreed to the present Protocol, which shall have the same force and validity as if it had been inserted in the body of the Treaty itself.

It is agreed that the arrangement contained in Article IV. of the said Treaty shall be subject to the restrictions on the surrender of fugitive criminals contained in the Acts respecting extradition which are in force in the dominions of Her Britannic Majesty, and the procedure to be adopted with respect to the surrender of such criminals shall be in conformity with the provisions of the said Acts.

In witness whereof the undersigned duly authorized for this purpose, have signed the present Protocol, in duplicate, and have affixed thereto their seals.

Done at Nukualofa, on the 3rd day of July, 1882.

(L.S.) ARTHUR GORDON.

(L.S.) TUBOU MALOHI.

UNITED STATES.

TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES.

Signed at Washington, August 9, 1842.

Ratifications exchanged at London October 13, 1842.*

* * * * *

ARTICLE X.

It is agreed that Her Britannic Majesty and the United States shall, upon mutual requisitions by them or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other: provided that this shall only be done upon such evidence of criminality, as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed: and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates, respectively, to the

* Extradition Acts applied by § 27 of 33 & 34 Vict. c. 52.

end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the Party who makes the requisition and receives the fugitive.

* * * * *

URUGUAY.

TREATY BETWEEN HER MAJESTY AND THE ORIENTAL REPUBLIC OF THE URUGUAY FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS.—*Signed at Monte Video, March 26, 1884.*

Ratifications exchanged at Monte Video, December 13, 1884.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Excellency the President of the Oriental Republic of the Uruguay, having judged it expedient, with a view to the better administration of justice and the prevention of crime, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude the present Treaty, and have appointed as their Plenipotentiaries, namely :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable Edmund John Monson, a Companion of the Most Honourable Order of the Bath, Her Majesty's Minister Resident and Consul-General to the Oriental Republic of the Uruguay; and

His Excellency the President of the Oriental Republic of the Uruguay, Dr. Don Manuel Herrera y Obes, his Minister Secretary of State for the Department of Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Article :—

* Extradition Acts applied by Order in Council from March 20, 1885.

ARTICLE I.

The High Contracting Parties engage to deliver up to each other reciprocally, under the circumstances and conditions stated in the present Treaty, all persons, excepting their own subjects or citizens, who, being accused or convicted of any of the crimes enumerated in Article II. committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II.

The extradition shall be reciprocally granted for the following crimes or offences:—

1. Murder (including assassination, parricide, infanticide, poisoning, or attempt to murder).

2. Manslaughter.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.

4. Rape.

5. Aggravated or indecent assault. Carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.

6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.

7. Abduction of minors.

8. Bigamy.

9. Wounding, or inflicting grievous bodily harm, when such acts cause permanent disease or incapacity for personal labour, or the absolute loss or privation of a member or organ.

10. Arson.

11. Burglary or housebreaking, robbery with violence, larceny or embezzlement.

12. Fraud by banker, agent, factor, trustee, director, member, or public officer of any company, made criminal by any law for the time being in force.

13. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property knowing the same to have been feloniously stolen or unlawfully obtained, the quantity or value of which shall be greater in amount than £200 sterling.

14. (a.) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;

(b.) Forgery, or counterfeiting, or altering or knowingly uttering what is forged, counterfeited, or altered;

(c.) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.

15. Crimes against the bankruptcy law.

16. Any malicious act done with intent to endanger persons in a railway train.

17. Malicious injury to property if such offence be indictable, and punishable with one year's imprisonment or more.

18. Crimes committed at sea:—

(a.) Piracy by the law of nations;

(b.) Sinking or destroying a vessel at sea, or attempting or conspiring to do so;

(c.) Revolt or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master;

(d.) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

19. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any

of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

The provisions of the present Treaty shall not be applicable to offences committed before the date of its conclusion.

ARTICLE IV.

A person surrendered shall not be detained or tried for any crime or offence committed in the other country before the extradition other than the crime or offence for which his surrender has been granted.

ARTICLE V.

No person shall be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the competent authority of the State in which he is that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VI.

In the Oriental Republic of the Uruguay the proceedings for the demand and obtaining extradition shall be as follows :—

The Diplomatic Representative or Consul-General of Great Britain shall address to the Minister Secretary of State in the Department of Foreign Relations, with the demand for extradition, an authentic and legalized copy of the sentence or mandate of arrest issued by competent authority, or other documents of the same legal force, against the accused person, setting forth

clearly the crime or offence on account of which proceedings are being taken against the fugitive. These judicial documents shall be accompanied, if possible, by a description of the person claimed, and by any other information or intelligence which may serve to identify such person.

These documents shall be communicated by the Minister of Foreign Relations to the Superior Tribunal of Justice, which, in its turn, shall transmit them to the Stipendiary Magistrate (*Juez Letrado del Crimen*). This functionary shall have power, authority, and jurisdiction, in virtue of the claim preferred, to issue the formal order of arrest of the person so claimed, in order that he may be brought before him, and that, in his presence, and after hearing his defence, the proofs of his criminality may be taken into consideration; and if the result of this audience be that the said proofs are sufficient to sustain the charge, he shall be obliged to issue the formal order of delivery, giving notice thereof, by the medium of the Superior Tribunal of Justice, to the Minister of Foreign Relations, who shall dictate the necessary measures for placing the fugitive at the disposal of the British Agents charged to receive him.

In case the documents furnished by Her Britannic Majesty's Government for the identification of the person claimed, or the information obtained for the same end by the authorities of the Oriental Republic of the Uruguay, be held to be insufficient, notice shall immediately be given of the fact to the Diplomatic Representative or Consular Agent of Great Britain, the person under arrest remaining in custody until the British Government shall have furnished new proofs to establish the identity of such person, or evidence to clear up other difficulties relating to the examination of, and decision upon, the matter.

The arrest above referred to of the person proceeded against for any of the crimes or offences specified in this Treaty shall

not be prolonged more than three months. At the expiration of that period, if the Government making the claim shall not have fulfilled the conditions above stated, the prisoner shall be released, and shall not be liable to be rearrested on the same charge.

ARTICLE VII.

In the dominions of Her Britannic Majesty, other than the Colonies or foreign Possessions of Her Majesty, the manner of proceeding, in order to demand and obtain extradition shall be as follows:—

(a.) In the case of a person accused—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Representative or Consul-General of the Oriental Republic of the Uruguay. The said demand shall be accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in that Republic and duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of

the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issued the warrant or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Oriental Republic of the Uruguay.

(b.) In the case of a person convicted—The course of proceeding shall be the same as above indicated, except that the warrant to be transmitted by the Diplomatic Representative or Consul-General of the Oriental Republic of the Uruguay in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

(c.) Persons convicted by judgment in default or *arrêt de contumace* shall be, in the matter of extradition, considered as persons accused, and, as such, be surrendered.

(d.) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have

the right to apply for a writ of *habeas corpus* ; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE VIII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE IX.

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction :

Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall in accordance with this Article be discharged, as well in the United Kingdom as in the Oriental Republic of the Uruguay, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic or Consular Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE X.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or Chief Authority of such Colony or Possession by the Chief Consular Officer of the Oriental Republic of the Uruguay in such Colony or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or Chief Authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Uruguayan criminals who

may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XI.

The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or punishment, has been acquired by lapse of time, according to the laws of that country.

ARTICLE XII.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIII.

If the individual claimed should be under prosecution, or have been condemned for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been discharged in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, the extradition shall nevertheless take place.

ARTICLE XIV.

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be delivered up with his person at the time when the extradition takes place. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime or offence, and shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

ARTICLE XV.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance as far as the frontier; they reciprocally agree to bear such expenses themselves.

ARTICLE XVI.

The present Treaty shall be ratified, and the ratifications shall be exchanged at Monte Video as soon as possible.

It shall come into operation ten days after its publication, in conformity with the laws of the respective countries, and each of the Contracting Parties may at any time terminate the Treaty on giving to the other six months' notice of its intention to do so.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Monte Video, the twenty-sixth day of March in the year of Our Lord one thousand eight hundred and eighty-four.

(L.S.) EDMUND MONSON.

(L.S.) MAN^{te}. HERR^{te}. y OBES.

FUGITIVE OFFENDERS ACT, 1881

(44 & 45 Vict. c. 69).

ARRANGEMENT OF SECTIONS.

Section

1. Short title.

PART I.

RETURN OF FUGITIVES.

2. Liability of fugitive to be apprehended and returned.
3. Endorsing of warrant for apprehension of fugitive.
4. Provisional warrant for apprehension of fugitive.
5. Dealing with fugitive when apprehended.
6. Return of fugitive by warrant.
7. Discharge of person apprehended if not returned within one month.
8. Sending back of persons apprehended if not prosecuted within six months or acquitted.
9. Offences to which this part of this Act applies.
10. Powers of superior court to discharge fugitive when case frivolous or return unjust.
11. Power of Lord Lieutenant in Ireland.

PART II.

INTER-COLONIAL BACKING OF WARRANTS, AND OFFENCES.

Application of part of Act.

12. Application of part of Act to group of British possessions.

Backing of Warrants.

Section

13. Backing in one British possession of warrant issued in another of same group.
14. Return of prisoner apprehended under backed warrant.
15. Backing in one British possession of summons, &c. of witnesses issued in another possession of same group.
16. Provisional warrant in group of British possessions.
17. Discharge of prisoner not returned within one month to British possession of same group.
18. Sending back of prisoner not prosecuted or acquitted to British possession of same group.
19. Refusal to return prisoner where offence too trivial.

PART III.

Trial, &c. of Offences.

20. Offences committed on boundary of two adjoining British possessions.
21. Offences committed on journey between two British possessions.
22. Trial of offence of false swearing or giving false evidence.
23. Supplemental provision as to trial of person in any place.
24. Issue of search warrant.
25. Removal of prisoner by sea from one place to another.

PART IV.

SUPPLEMENTAL.

Warrants and Escape.

26. Endorsement of warrant.
27. Conveyance of fugitives and witnesses.
28. Escape of prisoner from custody.

Evidence.

Section

29. Depositions to be evidence, and authentication of depositions and warrants.

Miscellaneous.

30. Provision as to exercise of jurisdiction by magistrates.
31. Power as to making and revocation of Orders in Council.
32. Power of legislature of British possession to pass laws for carrying into effect this Act.

Application of Act.

33. Application of Act to offences at sea or triable in several parts of Her Majesty's dominions.
34. Application of Act to convicts.
35. Application of Act to removal of person triable in more than one part of Her Majesty's dominions.
36. Application of Act to foreign jurisdiction.
37. Application of Act to, and execution of warrant in United Kingdom, Channel Islands, and Isle of Man.
38. Application of Act to past offences.

Definitions and Repeal.

39. Definition of terms.
40. Commencement of Act.
41. Repeal of Act in Schedule.

SCHEDULE.

FUGITIVE OFFENDERS ACT, 1881

(44 & 45 Vict. c. 69).

An Act to amend the Law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other Purposes connected with the Trial of Offenders. [27th August, 1881.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Short title.

1. This Act may be cited as the Fugitives Offenders Act, 1881.

PART I.

RETURN OF FUGITIVES.

Liability of fugitive to be apprehended and returned.

2. Where a person accused of having committed an offence (to which this part of this Act applies) in one part of Her Majesty's dominions has left that part, such person (in this Act referred to as a fugitive from that part) if found in another part of Her Majesty's dominions, shall be liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive.

A fugitive may be so apprehended under an endorsed warrant or a provisional warrant.

Endorsing of warrant for apprehension of fugitive.

3. Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part of Her Majesty's dominions in or on the way to which the fugitive is or is suspected to be; (that is to say,)

(1.) A judge of a superior court in such part; and

(2.) In the United Kingdom a Secretary of State and one of the magistrates of the metropolitan police court in Bow Street; and

(3.) In a British possession the governor of that possession, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act and the warrant so endorsed shall be a sufficient authority to apprehend the fugitive in the part of Her Majesty's dominions in which it is endorsed, and bring him before a magistrate.

Provisional warrant for apprehension of fugitive.

4. A magistrate of any part of Her Majesty's dominions may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to that part on such information, and under such circumstances, as would in his opinion justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction, and such warrant may be backed and executed accordingly.

A magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a

certified copy thereof, if he is in the United Kingdom, to a Secretary of State, and if he is in a British possession, to the governor of that possession, and the Secretary of State or governor may, if he think fit, discharge the person apprehended under such warrant.

Dealing with fugitive when apprehended.

5. A fugitive when apprehended shall be brought before a magistrate, who (subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction.

If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this part of this Act applies, the magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case as he may think fit, if in the United Kingdom to a Secretary of State, and if in a British possession to the governor of that possession.

Where the magistrate commits the fugitive to prison he shall inform the fugitive that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus, or other like process.

A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time, as under the circum-

stances seems requisite for the production of an endorsed warrant.

Return of fugitive by warrant.

6. Upon the expiration of fifteen days after a fugitive has been committed to prison to await his return, or if a writ of habeas corpus or other like process is issued with reference to such fugitive by a superior court, after the final decision of the court in the case,

- (1.) If the fugitive is so committed in the United Kingdom, a Secretary of State; and
- (2.) if the fugitive is so committed in a British possession, the governor of that possession,

may, if he thinks it just, by warrant under his hand order that fugitive to be returned to the part of Her Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed by sea or otherwise to the said part of Her Majesty's dominions, to be dealt with there in due course of law as if he had been there apprehended, and such warrant shall be forthwith executed according to the tenor thereof.

The governor or other chief officer of any prison, on request of any person having the custody of a fugitive under any such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

*Discharge of person apprehended if not returned within
one month.*

7. If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's

dominions to await his return, is not conveyed out of that part within one month after such committal, a superior court, upon application by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make such application has been given, if the said part is the United Kingdom to a Secretary of State, and if the said part is a British possession to the governor of the possession, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody.

Sending back of persons apprehended if not prosecuted within six months or acquitted.

8. Where a person accused of an offence and returned in pursuance of this part of this Act to any part of Her Majesty's dominions, either is not prosecuted for the said offence within six months after his arrival in that part, or is acquitted of the said offence, then if that part is the United Kingdom a Secretary of State, and if that part is a British possession the governor of that possession, may, if he think fit, on the request of such person, cause him to be sent back free of cost and with as little delay as possible to the part of Her Majesty's dominions in or on his way to which he was apprehended.

Offences to which this part of this Act applies.

9. This part of this Act shall apply to the following offences, namely, to treason and piracy, and to every offence, whether called felony, misdemeanor, crime, or by any other name, which is for the time being punishable in the part of Her Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater

punishment; and for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour.

This part of this Act shall apply to an offence notwithstanding that by the law of the part of Her Majesty's dominions in or on his way to which the fugitive is or is suspected of being it is not an offence, or not an offence to which this part of this Act applies; and all the provisions of this part of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in such last-mentioned part of Her Majesty's dominions an offence to which this part of this Act applies.

Powers of superior court to discharge fugitive when case frivolous or return unjust.

10. Where it is made to appear to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the court seems just.

Power of Lord Lieutenant in Ireland.

11. In Ireland the Lord Lieutenant or Lords Justices or other chief governor or governors of Ireland, also the chief

secretary of such Lord Lieutenant, may, as well as a Secretary of State, execute any portion of the powers by this part of this Act vested in a Secretary of State.

PART II.

INTER-COLONIAL BACKING OF WARRANTS, AND OFFENCES.

Application of part of Act to group of British possessions.

12. This part of this Act shall apply only to those groups of British possessions to which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same.

It shall be lawful for Her Majesty from time to time by Order in Council to direct that this part of this Act shall apply to the group of British possessions mentioned in the Order, and by the same or any subsequent Order to except certain offences from the application of this part of this Act, and to limit the application of this part of this Act by such conditions, exceptions, and qualifications as may be deemed expedient.

BACKING OF WARRANTS.

Backing in one British possession of warrant issued in another of same group.

13. Where in a British possession of a group to which this part of this Act applies a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that possession, and such person is or is suspected of being in or on the way to another British possession of the same group, a magistrate in the last-mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed

shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate, the person named in the warrant, and bring him before the endorsing magistrate or some other magistrate in the same British possession.

Return of prisoner apprehended under backed warrant.

14. The magistrate before whom a person so apprehended is brought, if he is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue the same, and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant, may order such prisoner to be returned to the British possession in which the warrant was issued, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or any one or more of them, and to be held in custody and conveyed by sea or otherwise into the British possession in which the warrant was issued, there to be dealt with according to law as if he had been there apprehended. Such order for return may be made by warrant under the hand of the magistrate making it, and may be executed according to the tenor thereof.

A magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him.

Backing in one British possession of summons, &c., of witnesses issued in another possession of same group.

15. Where a person required to give evidence on behalf of the prosecutor or defendant on a charge for an offence punishable by law in a British possession of a group to which this part of this Act applies, is or is suspected of being in or on

his way to any other British possession of the same group, a judge, magistrate, or other officer who would have lawful authority to issue a summons, requiring the attendance of such witness, if the witness were within his jurisdiction, may issue a summons for the attendance of such witness, and a magistrate in any other British possession of the same group, if satisfied that the summons was issued by some judge, magistrate, or officer having lawful authority as aforesaid, may endorse the summons with his name; and the witness, on service in that possession of the summons, so endorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be tried and punished either in the possession in which he is served or in the possession in which the summons was issued, and shall be liable to the punishment imposed by the law of the possession in which he is tried for the failure of a witness to obey such a summons. The expression "summons" in this section includes any subpoena or other process for requiring the attendance of a witness. -

Provisional warrant in group of British possessions.

16. A magistrate in a British possession of a group to which this part of this Act applies, before the endorsement in pursuance of this part of this Act of a warrant for the apprehension of any person, may issue a provisional warrant for the apprehension of that person, on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which such person is accused were an offence punishable by the law of the said possession, and had been committed within his jurisdiction, and such warrant may be backed and executed accordingly; provided that a person arrested under such provisional warrant shall be discharged unless the original warrant is produced and endorsed

within such reasonable time as may under the circumstances seem requisite.

*Discharge of prisoner not returned within one month to
British possession of same group.*

17. If a prisoner in a British possession whose return is authorised in pursuance of this part of this Act is not conveyed out of that possession within one month after the date of the warrant ordering his return, a magistrate or a superior court, upon application by or on behalf of the prisoner, and upon proof that reasonable notice of the intention to make such application has been given to the person holding the warrant and to the chief officer of the police of such possession or of the province or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order such prisoner to be discharged out of custody.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to appeal to a superior court.

*Sending back of prisoner not prosecuted or acquitted to
British possession of same group.*

18. Where a prisoner accused of an offence is returned in pursuance of this part of this Act to a British possession, and either is not prosecuted for the said offence within six months after his arrival in that possession or is acquitted of the said offence, the governor of that possession, if he thinks fit, may, on the requisition of such person, cause him to be sent back, free of cost, and with as little delay as possible, to the British possession in or on his way to which he was apprehended.

Refusal to return prisoner where offence too trivial.

19. Where the return of a prisoner is sought or ordered

under this part of this Act, and it is made to appear to a magistrate or to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of such prisoner not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities of communication, and to all the circumstances of the case, be unjust or oppressive, or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the court or magistrate may discharge the prisoner either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the magistrate or court seems just.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to an appeal to a superior court.

PART III.

TRIAL, ETC. OF OFFENCES

Offences committed on boundary of two adjoining British possessions.

20. Where two British possessions adjoin, a person accused of an offence committed on or within the distance of five hundred yards from the common boundary of such possessions may be apprehended, tried, and punished in either of such possessions.

Offences committed on journey between two British possessions.

21. Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or

vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried in any British possession through a part of which such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is the boundary:

Provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject, where it is not shown that the offence was committed in a British possession.

Trial of offence of false swearing or giving false evidence.

22. A person accused of the offence (under whatever name it is known) of swearing or making any false deposition, or of giving or fabricating any false evidence, for the purposes of this Act, may be tried either in the part of Her Majesty's dominions in which such deposition or evidence is used, or in the part in which the same was sworn, made, given or fabricated, as the justice of the case may require.

Supplemental provision as to trial of person in any place.

23. Where any part of this Act provides for the place of trial of a person accused of an offence, that offence shall, for all purposes of and incidental to the apprehension, trial, and punishment of such person, and of and incidental to any proceedings and matters preliminary, incidental to, or consequential thereon, and of and incidental to the jurisdiction of any

court, constable, or officer with reference to such offence, and to any person accused of such offence, be deemed to have been committed in any place in which the person accused of the offence can be tried for it; and such person may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874.*

Issue of search warrant.

24. Where a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of any part of this Act in any part of Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every court and magistrate of the part in which the warrant is endorsed or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that court or magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such court or magistrate.

Removal of prisoner by sea from one place to another.

25. Where a person is in legal custody in a British possession either in pursuance of this Act or otherwise, and such person is required to be removed in custody to another place in or belonging to the same British possession, such person, if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects, shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed; and the provisions of this Act with respect to the

* 37 & 38 Vict. c. 27.

retaking of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty of the offence of escaping or attempting to escape, or aiding or attempting to aid a prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid, in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act.

PART IV.

SUPPLEMENTAL.—WARRANTS AND ESCAPE.

Endorsement of warrant.

26. An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorise all or any of the persons named in the endorsement, and of the persons to whom the warrant was originally directed, and also every constable, to execute the warrant within the part of Her Majesty's dominions or place within which such endorsement is by this Act made a sufficient authority, by apprehending the person named in it, and bringing him before some magistrate in the said part or place, whether the magistrate named in the endorsement or some other.

For the purposes of this Act every warrant, summons, subpoena, and process, and every endorsement made in pursuance of this Act thereon, shall remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office.

Conveyance of fugitives and witnesses.

27. Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part

One or Part Two of this Act, such fugitive or prisoner may be sent thither in any ship belonging to Her Majesty or to any of her subjects.

For the purpose aforesaid, the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody, and to the witnesses, so that such master be not required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage.

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require.

Every such master shall, on his ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable, there to be dealt with according to law.

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable on summary conviction to a fine not exceeding fifty pounds, which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the Merchant Shipping Act, 1854,* and the Acts amending the same.

* 17 & 18 Vict. c. 104.

Escape of prisoner from custody.

28. If a prisoner escape, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act, he may be retaken in the same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape, by breach of prison or otherwise, from custody under any warrant issued or endorsed in pursuance of this Act, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed, and the part in which the prisoner escapes, and the part in which the offender is found.

EVIDENCE.

Depositions to be evidence, and authentication of depositions and warrants.

29. A magistrate may take depositions for the purposes of this Act in the absence of a person accused of an offence in like manner as he might take the same if such person were present and accused of the offence before him.

Depositions (whether taken in the absence of the fugitive or otherwise) and copies thereof, and official certificates of or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act.

Provided that nothing in this Act shall authorise the reception of any such depositions, copies, certificates, or documents in evidence against a person upon his trial for an offence.

Warrants and depositions, and copies thereof, and official

certificates of or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a Secretary of State, or with the public seal of a British possession, or with the official seal of a governor of a British possession or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession.

And all courts and magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it.

MISCELLANEOUS.

Provision as to exercise of jurisdiction by magistrates.

30. The jurisdiction under Part One of this Act to hear a case and commit a fugitive to prison to await his return shall be exercised,—

- (1.) In England, by a chief magistrate of the metropolitan police courts or one of the other magistrates of the metropolitan police court at Bow Street; and
- (2.) In Scotland, by the sheriff or sheriff substitute of the county of Edinburgh; and
- (3.) In Ireland, by one of the police magistrates of the Dublin metropolitan police district; and
- (4.) In a British possession, by any judge, justice of the peace, or other officer having the like jurisdiction as one of the magistrates of the metropolitan police

court in Bow Street, or by such other court, judge, or magistrate as may be from time to time provided by an Act or ordinance passed by the legislature of that possession.

If a fugitive is apprehended and brought before a magistrate who has no power to exercise the jurisdiction under this Act in respect of that fugitive, that magistrate shall order the fugitive to be brought before some magistrate having that jurisdiction, and such order shall be obeyed.

Power as to making and revocation of Orders in Council.

31. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes of this Act, and to revoke and vary any Order so made, and every Order so made shall while it is in force have the same effect as if it were enacted in this Act.

An Order in Council made for the purposes of this Act shall be laid before Parliament as soon as may be after it is made if Parliament is then in session, or if not, as soon as may be after the commencement of the then next session of Parliament.

Power of legislature of British possession to pass laws for carrying into effect this Act.

32. If the legislature of a British possession pass any Act or ordinance—

- (1.) For defining the offences committed in that possession to which this Act or any part thereof is to apply; or
- (2.) For determining the court, judge, magistrate, officer, or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised; or
- (3.) For payment of the costs incurred in returning a fugitive or a prisoner, or in sending him back if not

prosecuted or if acquitted, or otherwise in the execution of this Act; or

(4.) In any manner for the carrying of this Act or any part thereof into effect in that possession,

it shall be lawful for Her Majesty by Order in Council to direct, if it seems to Her Majesty in Council necessary or proper for carrying into effect the objects of this Act, that such Act or ordinance, or any part thereof, shall with or without modification or alteration be recognised and given effect to throughout her Majesty's dominions and on the high seas as if it were part of this Act.

APPLICATION OF ACT.

Application of Act to offences at sea or triable in several parts of Her Majesty's dominions.

33. Where a person accused of an offence can by reason of the nature of the offence, or the place in which it was committed, or otherwise, be, under this Act or otherwise, tried for or in respect of the offence in more than one part of Her Majesty's dominions, a warrant for the apprehension of such person may be issued in any part of Her Majesty's dominions in which he can, if he happens to be there, be tried; and each part of this Act shall apply as if the offence had been committed in the part of Her Majesty's dominions where such warrant is issued, and such person may be apprehended and returned in pursuance of this Act, notwithstanding that in the place in which he is apprehended a court has jurisdiction to try him:

Provided that if such person is apprehended in the United Kingdom a Secretary of State, and if he is apprehended in a British possession, the governor of such possession, may, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to

all the circumstances of the case, it would be conducive to the interests of justice so to do, order such person to be tried in the part of Her Majesty's dominions in which he is apprehended, and in such case any warrant previously issued for his return shall not be executed.

Application of Act to convicts.

34. Where a person convicted by a court in any part of Her Majesty's dominions of an offence committed either in Her Majesty's dominions or elsewhere, is unlawfully at large before the expiration of his sentence, each part of this Act shall apply to such person, so far as is consistent with the tenor thereof, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted.

Application of Act to removal of person triable in more than one part of Her Majesty's dominions.

35. Where a person accused of an offence is in custody in some part of Her Majesty's dominions, and the offence is one for or in respect of which, by reason of the nature thereof or of the place in which it was committed or otherwise, a person may under this Act or otherwise be tried in some other part of Her Majesty's dominions, in such case a superior court, and also if such person is in the United Kingdom a Secretary of State, and if he is in a British possession the governor of that possession, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, may by warrant direct the removal of such offender to some other part of Her Majesty's dominions in which he can be tried,

and the offender may be returned, and, if not prosecuted or acquitted, sent back free of cost in like manner as if he were a fugitive returned in pursuance of Part One of this Act, and the warrant were a warrant for the return of such fugitive, and the provisions of this Act shall apply accordingly.

Application of Act to foreign jurisdiction.

36. It shall be lawful for Her Majesty from time to time by Order in Council to direct that this Act shall apply as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession, and to provide for carrying into effect such application.

Application of Act to, and execution of warrant in United Kingdom, Channel Islands, and Isle of Man.

37. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom and those islands shall be deemed for the purpose of this Act to be one part of her Majesty's dominions; and a warrant endorsed in pursuance of Part One of this Act may be executed in every place in the United Kingdom and the said islands accordingly.

Application of Act to past offences.

38. This Act shall apply where an offence is committed before the commencement of this Act, or, in the case of Part Two of this Act, before the application of that part to a British possession or to the offence, in like manner as if such offence had been committed after such commencement or application.

DEFINITIONS AND REPEAL.

Definition of terms.

39. In this Act, unless the context otherwise requires,—

“ Secretary of State : ”

The expression “ Secretary of State ” means one of Her Majesty’s Principal Secretaries of State :

“ British possession : ”

The expression “ British possession ” means any part of Her Majesty’s dominions, exclusive of the United Kingdom, the Channel Islands, and Isle of Man ; all territories and places within Her Majesty’s dominions which are under one legislature shall be deemed to be one British possession and one part of Her Majesty’s dominions :

“ Legislature : ”

The expression “ legislature,” where there are local legislatures as well as a central legislature, means the central legislature only :

“ Governor : ”

The expression “ governor ” means any person or persons administering the government of a British possession, and includes the governor and lieutenant governor of any part of India :

“ Constable : ”

The expression “ constable ” means, out of England, any policeman or officer having the like powers and duties as a constable in England :

“Magistrate:”

The expression “magistrate” means, except in Scotland, any justice of the peace, and in Scotland means a sheriff or sheriff substitute, and in the Channel Islands, Isle of Man, and a British possession means any person having authority to issue a warrant for the apprehension of persons accused of offences and to commit such persons for trial :

“Offence punishable on indictment:”

The expression “offence punishable on indictment” means, as regards India, an offence punishable on a charge or otherwise :

“Oath:”

The expression “oath” includes affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing, and the expression “swear” and other words relating to an oath or swearing shall be construed accordingly :

“Deposition:”

The expression “deposition” includes any affidavit, affirmation, or statement made upon oath as above defined :

“Superior court.”

The expression “superior court” means :

- (1.) In England, Her Majesty’s Court of Appeal and High Court of Justice ; and
- (2.) In Scotland, the High Court of Justiciary ; and

- (3.) In Ireland, Her Majesty's Court of Appeal and Her Majesty's High Court of Justice at Dublin; and
- (4.) In a British possession, any court having in that possession the like criminal jurisdiction to that which is vested in the High Court of Justice in England, or such court or judge as may be determined by any Act or ordinance of that possession.

Commencement of Act.

40. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-two, which date is in this Act referred to as the commencement of this Act.

Repeal of Act in Schedule.

41. The Act specified in the Schedule to this Act is hereby repealed as from the commencement of this Act:

Provided that this repeal shall not affect—

- (a.) Any warrant duly endorsed or issued, nor anything duly done or suffered before the commencement of this Act; nor
- (b.) Any obligation or liability incurred under an enactment hereby repealed; nor
- (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor
- (d.) Any legal proceeding or remedy in respect of any such warrant, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such warrant may be endorsed and executed, and any such legal proceeding and remedy may be carried on, as if this Act had not passed.

SCHEDULE.

Year and Chapter.	Title.
6 & 7 Vict. c. 34.	An Act for the better apprehension of certain offenders.

MEMORANDUM RESPECTING CASES OF EXTRADITION OF
BRITISH SUBJECTS FROM FRANCE BETWEEN THE
YEARS 1852 AND 1865.

1. Case of James Howie, fraudulent bankrupt, whose extradition is applied for, October 8, 1852, but the French Government, though consenting to the extradition, does not succeed in finding him, as recorded in a despatch dated October 29, 1852.

2. Case of Alexander Heilbronn, accused of forgery, September 12, 1853. The French Government consents to the same, October 1, 1853.

3. Case of Harry Arthur Allen, accused of forgery, whose extradition was requested December 3, 1853. To this request no reply from the French Government is to be found.

4. Case of David Landrigan, an English deserter, June 15, 1854, whose extradition the French Government refused on the ground of desertion not being one of the crimes mentioned in the Treaty, June 30, 1854.

5. Case of Charles Healy, whose extradition is requested March 8, 1857, he being accused of fraudulent bankruptcy. The French Government consent to give him up, March 24, 1857, but the original request is withdrawn, owing to the fact of Healy's compounding with his creditors, April 24, 1857.

6. Case of Thomas Glass, whose extradition is requested, February 28, 1857, and granted March 30, 1857.

7. Case of Michael Clarke, whose extradition is asked for, June 22, 1859. The French Government reply that search will be made for him with a view to the above result, but a final despatch, dated August 22, 1859, states that no trace of him can be found.

8. Case of Baron de Vidil, whose extradition is requested,

July 10, 1861, and refused, July 11, 1861, because he is a French subject.

9. Case of Francis James Leah, whose extradition is requested, September 12, 1865, but refused, September 14, 1865, because theft, the crime of which the above was accused, does not come within the scope of the Treaty.

THE LAMIRANDE EXTRADITION CASE (CANADA).

A complete account of this will be found in the following judgment delivered by Mr. Justice Drummond :—" On the 26th July last (1866) a document under the signature of his Excellency the Governor-General, purporting to be a warrant for the extradition of the petitioner, issued under the authority vested in his Excellency by the provisions of 6 & 7 Vict., intituled 'An Act to give effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders,' setting forth that the said petitioner stood accused of the crime of 'forgery by having, in his capacity of cashier of the Bank of France at Poitiers, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of seven hundred thousand francs;' that a requisition had been made to his Excellency by the Consul-General of France in the province of British North America to issue his warrant for the arrest of the said prisoner, and requiring all the justices of the peace and other magistrates and officers of justice within their several jurisdictions to aid in apprehending the petitioner and committing him to jail. Under this document the prisoner was arrested, and after examination before William H. Brehaut, Esq., police-magistrate and justice of the peace, was fully committed to the common jail of this district on the 22nd day of the current

month of August. On the following day, between the hours of eleven and twelve o'clock in the forenoon, notice was given in due form by the prisoner's counsel to the counsel charged with the criminal prosecutions in this district, that he (the counsel for the prisoner) would present a petition to any one of the judges of the Court of Queen's Bench who might be present in chambers at one o'clock in the afternoon of the following day (the 24th), praying for a writ of *habeas corpus* and the discharge of the prisoner. At the time appointed this petition was submitted to me. Mr. J. Doutre appeared for the petitioner, Mr. T. K. Ramsay for the Crown, and Mr. Pominville for the private prosecutor. A preliminary objection, raised on the ground of insufficient notice, was over-ruled. Mr. Doutre then set forth his client's case in a manner so lucid that I soon convinced myself, after perusing the statute cited in the warrant of extradition, that the warrant itself, the pretended warrant of arrest alleged to have been issued in France—*arrêt de renvoi*—and all the proceedings taken with a view to obtain the extradition of the petitioner, were unauthorised by the above cited statute, illegal, null and void, and that the petitioner was therefore entitled to his discharge from imprisonment. But as Mr. Pominville, whom I supposed to be acting as counsel for the Bank of France, wished to be heard, I adjourned the discussion of the case until the following morning. I would have issued the writ before adjourning had the counsel for the prisoner insisted upon it. But that gentleman was no doubt lulled into a sense of false security by the indignation displayed by the counsel for the Crown when Mr. Doutre signified to me his apprehension that a *coup de main* was in contemplation to carry off the petitioner before his case had been decided. On the following morning, Saturday, the 25th of this month, I ordered the issuing of a writ of *habeas corpus* to bring the petitioner before me with a view to his immediate discharge. My determination to discharge him

was founded upon the reasons following:—1. Because it is provided by the 1st section of the Act of the British Parliament to give effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders (6 & 7 Vict. c. 75), that every requisition to deliver up to justice any fugitive accused of any of the crimes enumerated in the said Act shall be made by an ambassador of the Government of France or by an accredited diplomatic agent: whereas the requisition made to deliver up the petitioner to justice has been made by Abel Frederic Gautier, Consul-General of France in the provinces of British North America, who is neither an ambassador of the Government of France nor an accredited diplomatic agent of that Government, according to his own avowal upon oath. 2. Because, by the 3rd section of the said statute it is provided that no justice of the peace, or any other person, shall issue his warrant for any such supposed offender until it shall have been proved to him upon oath or affidavit that the person applying for such warrant is the bearer of a warrant of arrest or other equivalent judicial document, issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it shall appear to him that the act charged against the supposed offender is clearly set forth in such warrant of arrest or other judicial document; whereas the justice of the peace who issued his warrant against the petitioner issued the same without having any such proof before him, the only document produced before him, as well as before me, in lieu of such warrant of arrest or other equivalent judicial documents, being a paper writing alleged to be a translation into English of a French document made by some unknown or unauthorized person in the office of the counsel for the prosecutor at New York, and bearing no authenticity whatever. 3. Because, supposing the said docu-

ment, purporting to be a translation of an *acte d'accusation* or indictment, accompanied by a pretended warrant for arrest, and designated as an *arrêt de renvoi*, to be authentic, it does not contain the designation of any crime comprised in the number of the various crimes for or by reason of the alleged commission of which any fugitive can be extradited under the said statute. 4. Because by the 1st section of the said Act it is provided that no justice of the peace shall commit any person accused of any of the crimes mentioned in the said Act (to wit, murder, attempt to commit murder, forgery, and fraudulent bankruptcy) unless upon such evidence as according to the laws of that part of Her Majesty's dominions in which the supposed offender shall be found would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be accused had been there committed; whereas the evidence produced against the petitioner upon the accusation of forgery brought against him before the committing magistrate would not have justified him in apprehending or committing the petitioner for the crime of forgery had the acts charged against him been committed in that part of Her Majesty's dominions where the petitioner was found—to wit, in Lower Canada. 5. Because the said warrant for the extradition of the petitioner, as well as the warrant for his apprehension, does not charge him with the commission of any one of the crimes for which a warrant of extradition can be issued under the said statute; inasmuch as in both of the said warrants the alleged offence is charged against the petitioner as 'forgery by having in the capacity of cashier of the branch of the Bank of France at Poitiers made false entries in the books of the bank, and thereby defrauded the said bank of the sum of seven hundred thousand francs.' Whereas the said offence as thus designated does not constitute the crime of forgery according to the laws of England and Lower Canada, for, to use the words of Judge Blackburn when he pronounced

judgment concurrently with Chief Justice Cockburn and Judge Shee, in a case analogous to this (*Ex parte Charles Windsor*, Court of Queen's Bench, May 1865, 13 W. R., 655), 'Forgery is the false making of an instrument purporting to be that which it is not; it is not the making of an instrument purporting to be that which it is; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced to writing.' The gaoler's return to this writ of *habeas corpus* was that he had delivered over the prisoner to Edme Justin Melin, *Inspecteur Principal de Police de Paris*, on the night of the 24th instant, at twelve o'clock, by virtue of an order signed by M. H. Sanborn, Deputy-Sheriff, grounded upon an instrument signed by his Excellency the Governor-General. It appears that the petitioner thus delivered up to this French policeman is now on his way to France, although his extradition was illegally demanded, and although he was accused of no crime under which he could have been legally extradited; and although, as I am credibly informed, his Excellency the Governor-General had promised, as he was bound in honour and justice, to grant him an opportunity of having his case decided by the first tribunal of the land before ordering his extradition. It is evident that his Excellency has been taken by surprise, for the document signed by him is a false record, purporting to have been signed on the 23rd instant at Ottawa, while his Excellency was at Quebec, and falsely certified to have been recorded at Ottawa before it had been signed by the Governor-General. In so far as the petitioner is concerned, I have no further order to make, for he who was to have been brought before me is now probably on the high seas, swept away by one of the most audacious and hitherto successful attempts to frustrate the ends of justice which has yet been heard of in Canada. The only action I can take, in so far as

he is concerned, is to order that a copy of this judgment be transmitted by the Clerk of the Crown to the Governor-General, for the adoption of such measures as his Excellency may be advised to take to maintain that respect which is due to the courts of Canada and to the laws of England. As to the public officers who have been connected with this matter, if any proceedings are to be adopted against them they will be informed thereof on Monday the 24th day of September next, in the Court of Queen's Bench, holding criminal jurisdiction, to which day I adjourn this case for further consideration."

NOTE ON POLITICAL OFFENCES.

"With regard to political offences there is no great difficulty. It should be provided, that no surrender should be granted except on the declaration of the minister of the foreign power that the fugitive is wanted for trial for the offence charged in the depositions used against him and no other. If treaties are made, there are abundant models for a clause which would protect political offenders from rendition. The clause lately proposed in the House of Commons was probably hastily drawn up, and was obviously faulty. It provided:—

"Nothing in this Act, or in any previous Acts relating to Treaties of Extradition, shall be construed to authorise the extradition of any person in whose case there shall be reasonable grounds for believing that his offence, if any, had for its motive or purpose the promotion or prevention of any political object; nor to authorise the extradition of any person the requisition for the delivery of whom shall not contain an undertaking on the part of the sovereign or government making such requisition that such person shall not be proceeded against, or punished on account of, any offence which

he shall have committed before he shall be delivered up other than the offence specified in the requisition.'

"This assumed that a political crime could be correctly defined as a crime committed from political motives. As was pointed out in the debate, the murder of President Lincoln, and the shooting of a policeman in Ireland by Fenian assassins, were both crimes committed for political reasons; but no one would pretend that they were any the less murders; and murders, the perpetrators of which it would be a disgrace to any nation to harbour. If Booth had escaped to England, there would have been little debate as to the propriety of giving him up to be tried for murder.

"The killing of a man in civil war, the seizure of property by the leaders of an armed rebellion, are examples of true political crimes. So far as rules upon the subject can be laid down, the provision of the Convention of 1852, and the clauses inserted in treaties made by France with other foreign nations, afford good models for imitation. But the line is a narrow one, and it would be well to leave to the Secretary of State a discretion which he would exercise in responsibility to Parliament. The existence of slavery in some countries causes another difficulty which might be got over either by a provision similar to that in the treaty between the United States and Mexico, which stipulated that no slave should be surrendered, or which would be far better, by limiting the rendition of slaves to cases of the most atrocious crimes."—*Extract from concluding chapter of First Edition.*

The following are the clauses upon this subject inserted in some of the French treaties:—

"Il est expressément stipulé que le prévenu ou le condamné dont l'extradition aura été accordée ne pourra être, dans aucun cas, poursuivi ou puni pour aucun crime ou délit politique antérieur à l'extradition.

"Ne sera pas réputé crime politique ni fait connexe à un semblable crime, l'attentat contre la personne du chef d'un gouvernement étranger, ou contre celle d'un des membres de sa famille, lorsque cet attentat constituera le fait, soit de meurtre, soit d'assassinat, soit d'empoisonnement."—*Article 8 of Convention between France and Saxe-Weimar, August 7, 1858.*

"§ 1. Il est expressément stipulé que le prévenu ou le condamné dont l'extradition aura été accordée, ne pourra, dans aucun cas, être poursuivi ou puni pour un délit politique antérieur à l'extradition, ni pour un des crimes ou délits non prévus par la présente Convention.

"§ 2. Mais il est entendu que les crimes contre la personne du souverain, ou des membres de sa famille, et respectivement des cardinaux de la Sainte Eglise, ne sont point compris dans le § 1 du présent Article."—*Convention between France and the Pontifical States, July 19, 1859.*

"Ses tentatives d'assassinat, d'homicide, ou d'empoisonnement contre le chef d'un gouvernement étranger ne seront pas réputés crimes politiques pour l'effet de l'extradition. Ne seront pas non plus considérés comme crimes politiques ceux énumérés dans cet Article, lorsqu'ils seront commis contre l'héritier immédiat de la couronne de France."—*Convention between France and Chili, April 11, 1860.*

"Il est bien entendu que ne sera pas réputé délit politique, ni fait connexe à un semblable délit, l'attentat contre la personne d'un souverain étranger ou contre celle des membres de sa famille, lorsque cet attentat constituera le fait, soit d'assassinat, soit d'empoisonnement, soit de meurtre."—*Additional Convention between France and the Low Countries, August 2, 1860.*

"I see a notice has been given that when the Bill goes into committee a clause will be proposed, the purpose of which is

to exclude all offences which are considered to be of a political character. I do not say that on principle I should have any objection to that, provided you define what is to be treated as a political offence. I take it that, in a rough and popular way, it would not be difficult to do that. For instance, if a man were killed in a riot, or in an attempt to excite a tumult or popular insurrection, that probably would be regarded as a political offence. But a difficulty would arise where you have to deal with attempts at assassination.

“It does seem to me that, while on the one hand we desire to retain inviolate the right of exemption from arrest for political offences, it is monstrous to say, on the other hand, that if any private person is assassinated in the streets of Paris for example, and the murderer escapes to England, he may be punished; but that if the person so assassinated is invested with any political character, then the offence becomes a political offence, and the law of England declares that he shall not be given up to justice. This position appears to me to be utterly untenable. There is, I apprehend, a discretionary power given to the Secretary of State as to the application of the Act, and all I can say on this point is, that if any honourable gentleman can succeed in establishing a distinction between the case of a purely political offence and an offence against morality, I shall be willing to consider the proposal to insert a clause to meet such a case.”—*Speech of Lord Stanley in the House of Commons*, August 3, 1866.

On the same occasion Mr. J. S. Mill suggested that the political offences excluded from the operation of the law should be defined as, “Any offence committed in the course of or furthering of civil war, insurrection, or political commotions.”

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